TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

No. 255.

THE CITY OF CLEVELAND, APPELLANT,

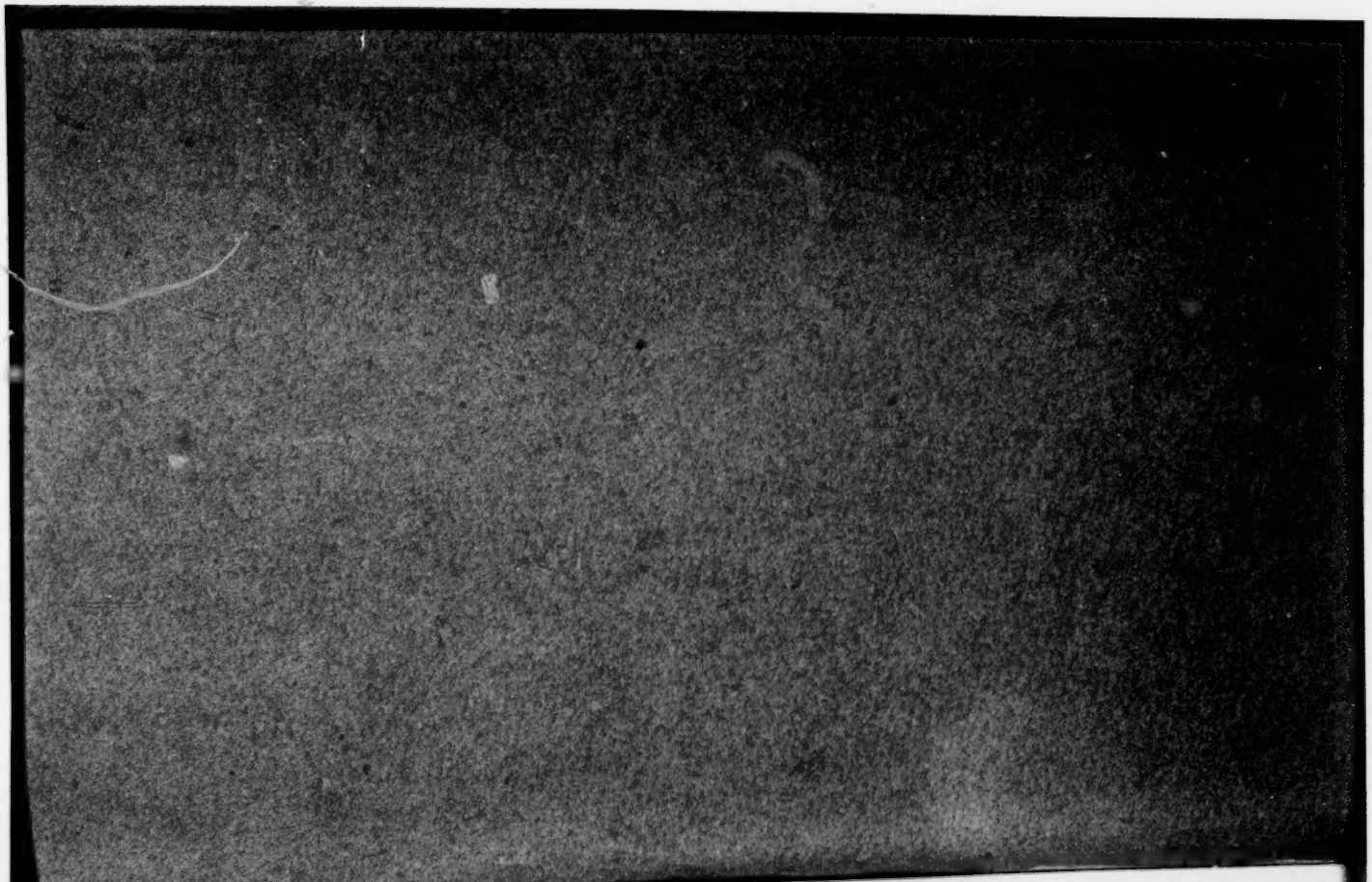
vs.

THE CLEVELAND CITY RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED APRIL 8, 1903.

(16,957.)



(18,887.)

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1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, } ss:

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio in the cause and matter hereinafter stated, the same being disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, on the first Tuesday in February, being the fifth day of said month, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the 125th, towit, on the 11th day of March, A. D. 1901.

Present: The Honorable Augustus J. Ricks, Honorable Francis J. Wing, United States district judges.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

Said action was commenced on the 29th day of October, A. D. 1898, and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned, and orders of the court were made and entered in the order, and on the dates hereinafter stated, to-wit:—

2 *Bill of Complaint.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } #5839. Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

The above named complainant, The Cleveland City Railway Company, a corporation duly organized and existing under the laws of the State of Ohio and a citizen of said State, brings this its bill of complaint against the above named defendant, The City of Cleveland, a municipal corporation of the State of Ohio and a citizen thereof.

And thereupon your orator complains and says:—

1. The complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various

lines of street railway hereinafter in this bill more particularly set forth.

The defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and, as respects the matters and things hereinafter set forth as to ordinances affecting said complainant, said defendant acts under delegated power from the legislature of the State of Ohio; and, so acting, has made sundry contracts with your orator and its predecessors in interest, under which it is so operating said lines of railway in said city.

2. That the amount in controversy in this action, which is a civil action, amounts, exclusive of interest and costs, to more than the sum of five thousand dollars, and is a controversy arising
3 under the Constitution of the United States, in this,—that your orator seeks relief against the defendant by this bill by reason of an attempt on the part of defendant to enforce against your orator a law of the State of Ohio, impairing the contract rights of your orator, and the operation of which, if permitted, would take from your orator its property without due process of law and deny to it the equal protection of the law,—in contravention of and violation of the Constitution of the United States, and especially contrary to and in violation of section 1 of article 14 of the amendments to the Constitution of the United States, and section 10, article 1, of the Constitution of the United States.

3. Your orator is a consolidated railway company, organized in the year 1893, having a capital stock of $8,000,000.00 of which $7,600,000.00 have been issued; having also a bonded indebtedness which was assumed upon the consolidation as part of the indebtedness of one of the constituent lines hereinafter mentioned, amounting to $2,026,000.00, payable within eleven years, with five per cent. interest, payable semi-annually, and secured by mortgage upon one of the constituent lines.

Said company was formed by the consolidation of two existing railway companies in the city of Cleveland, each of which owned and was operating lines of street railway under ordinances duly passed by said municipality, in the city of Cleveland, under delegated power from the State of Ohio, and accepted by said companies. By the terms of such consolidation, and the force and effect thereof as provided by the statutes of Ohio, your orator became and is possessed of all the rights, franchises, privileges and property theretofore possessed by said constituent companies and each
4 of them. The constituent companies which were so consolidated, forming your orator, were,—the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company, each of which was a corporation organized under the laws of the State of Ohio for the purpose of operating lines of street railway in the city of Cleveland.

4. That each of said constituent companies so consolidated was, prior thereto, operating its respective lines of street railway under ordinances passed by the city of Cleveland in pursuance of power

delegated to it by the legislature of the State of Ohio, and which ordinance-, having been accepted by said railway companies severally, became and were contracts binding upon both said city and upon each of said railway companies during the period of time for which said grants were made.

V. The said Woodland Avenue & West Side Street Railroad Company, which as aforesaid, was one of the constituent companies forming the complainant company, was organized in 1885, and was a consolidated company formed by the consolidation of two constituent companies, each of which, prior to said consolidation, owned and operated lines of street railway in the city of Cleveland, to-wit: the West Side Street Railroad Company and the Woodland Avenue Railway Company; and the said Woodland Avenue Railway Company, which was so consolidated, was the successor, by purchase, of the Kinsman Street Railroad Company, having become such about the year 1880.

VI. By the terms of the consolidation in 1885 of said West Side Street Railroad Company and the Woodland Avenue Railway Company, said consolidated company known as the Woodland Avenue & West Side Street Railroad Company became vested with all and singular the property, rights, privileges and franchises of said two constituent companies.

VII. The Cleveland City Cable Railway Company, one of the constituent companies forming the complainant company, at the time of such consolidation, was the successor and owner by purchase of all of the property, rights, privileges and franchises of the St. Clair Street Railroad Company, and the Superior Street Railroad Company, each of which companies was a corporation duly organized under the laws of the State of Ohio, and, prior to the formation of said Cleveland City Cable Railway Company, was the owner of and operating lines of street railway in the city of Cleveland under various grants and contracts with said city.

VIII. By virtue of the *constitution* of the Woodland Avenue & West Side Street Railroad Company and the said Cleveland City Cable Railway Compan*t* in 1893, as hereinbefore stated, the complainant company became vested with all the property, rights, privileges and franchises of said constituent companies and each and all of said companies hereinbefore mentioned.

IX. Your orator says that, prior to the year 1885 when the consolidated company aforesaid known as the Woodland Avenue & West Side Street Railroad Company was organized, the two constituent companies forming such consolidation were independent lines of street railway, one operating the lines of railway chiefly upon the west side of the Cuyahoga river the other upon the east side of said river running to the southeasterly portion of the city, and each of them acting under independent franchises and contracts from the city of Cleveland; that there was no exchange of traffic between said companies by way of transfers, and passengers patronizing such

roads were compelled to pay one fare to each, irrespective of the distance they desired to travel. The result of this situation was, that although the west and east sides of the river in Cleveland were closely allied and a very important part of the population of the city, both as respects business and residents, resided on the west side of the river, there was no street railway communication between such two parts of the city except by payment of two fares over said two lines of railway.

6 X. That, at the time of the consolidation of said West Side Street Railroad Company and said Woodland Avenue Railway Company lines, said West Side Company had the right, by ordinance from the said defendant city, to continue the operation of its road for twenty-five years from February, 1883, and, during all of said term, to charge a cash fare of five cents for each passenger carried; that the Woodland Avenue Railway Company was operating its line of road under several grants from the city of Cleveland, and, among others, a grant made in 1879 relating to the operation of cars from Water street, through Superior and Ontario and Woodland avenue to Madison avenue. This grant provided, among other things, that the company should not charge more than five cents cash fare, and the council in said ordinance reserved the right to thereafter increase or diminish the rate of fare, as it might deem wise and expedient; that thereafter, in 1893, said Woodland Avenue Company entered into a new contract with the city by ordinance duly passed and accepted, by which said company acquired the right to and agree- to extend and construct its line of railway upon Woodland avenue from the crossing of the Cleveland & Pittsburg Railroad Company's tracks to Corwin street; and in and by said ordinance agreed to new conditions and requirements by the city as to the operation of its cars and the repair and maintenance of streets and pavements thereon; and also agreed to thereafter operate through cars over said entire line, which was an agreement for the benefit of the city and citizens thereof. And also in and by said ordinance said company was granted the right to, and did agree that it would thereafter and during the continuance of said grant, which has not yet expired, charge but one fare of five cents over its entire line, including said extension; and this ordinance and contract so requiring your orator to comply with the conditions of said grant, and in which it so agreed to carry passengers at the

7 rate of fare therein fixed, is still in full force and effect. The portion of your orator's lines of street railway mentioned in the ordinance of October 17, 1898, hereinafter referred to, includes that portion of Woodland avenue in respect to which said Woodland Avenue Railway Company entered into said contract with said city in February, 1883.

XI. At the time of the consolidation of the said West Side and Woodland Avenue Companies, it was part of the plan of the company, upon making such consolidation, that the company should thereafter operate through cars from the easterly terminus of the

Woodland Avenue Company's line at the work house to the westerly terminus of the lines of the West Side Company on the west side of the river, a distance of seven or eight miles, and that, whenever it became practicable so to do, also to operate through car service upon branch lines.

In view of this offer of said consolidated company, the council of the city of Cleveland, on February 1st, 1885, duly passed an ordinance which is in the words and figures following:

"An ordinance to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company and said companies may be consolidated."

Section 1 of which ordinance is as follows:

"Be it ordained by the city council of the city of Cleveland That the consent of the city is hereby given to the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company upon the following conditions:

"The said consolidated company to carry passengers through without change of cars, by running of the cars through from the work house on the line of the Woodland Avenue Railway Company to the point on the West Side street railroad where Gordon avenue crosses Lorain street, and, when practicable in the judgment of the council, to do likewise on the branches of the consolidated lines; and that for a single fare from any point to any point on the lines or branches of the consolidated road no greater charge than five cents shall be collected and that tickets at the rate of eleven for fifty cents or twenty-two for one dollar shall at all times be kept for sale on cars by the conductors."

And in and by said ordinance it was further provided that the same should take effect and be in force — and after its legal
8 publication and the filing with the city of a written acceptance of the terms thereof; and thereafter said Woodland Avenue and West Side Street Railroad Company duly accepted the terms and conditions of said ordinance; and thereafter, and at all times since, the said Woodland Avenue & West Side Street Railroad Company, and your orator as its successor, has complied with all the terms and conditions of said ordinance, and has been carrying, and is now carrying, passengers in accordance with the terms thereof over said entire distance at the rate of fare therein fixed, and selling and accepting tickets for passage as therein provided. And your orator says that its said contract so made with the city upon its consolidation, and so fixing the rate of fare to be charged, had reference to and included the operation of cars upon that portion of Woodland avenue referred to in the ordinance of October 17, 1898, hereinafter set forth.

XII. That, after said consolidation so forming said Woodland Avenue & West Side Street Railroad Company, to-wit: in April,

1887, said company, proposing to lay an additional track in Franklin avenue and to extend its line of railway in Franklin avenue, entered into a contract with the defendant city, duly evidenced by ordinance duly passed by the city council and accepted by said company, wherein, among other things, it was provided that the grant therein made should continue and terminate with the grant of the main line of said company on the 10th day of February, 1908, and that it was made to said Woodland Avenue & West Side Street Railroad Company upon the express condition that no increase of fare should be charged by said railway company upon any part of its main line or on said extension, so that but one fare, not to exceed five cents, should be charged between any points on said company's main line or extensions including the extension therein granted and that said company should sell tickets on its cars as follows: Eleven for fifty cents and twenty-two for one dollar Your orator
9 says that said grant and contract so made in April, 1887, is still in full force and effect, and that part of the main line of railroad referred to in said ordinance was the line of railway operated upon Woodland avenue, formerly Kinsman street, and referred to in a certain ordinance of the city of Cleveland passed October 17, 1898, and hereinafter set forth.

XIII. That, after the formation of said Woodland Avenue & West Side Street Railroad Company, to-wit: August 12, 1887, it entered into a contract with the city of Cleveland relating to the extension of its track in Franklin avenue from Kentucky street to Waverly avenue, and along Waverly avenue to connect with its line of railroad on Bridge street, which grant to said company was, by its terms, to continue and expire with the grant of the main line, on the 10th of February, 1908; and in and by said ordinance it was expressly provided, and the same was made upon the condition agreed to by said company, that no increase of fare should be charged by said company on any part of its main line or on said extension, and that but one fare, not to exceed five cents, should be charged between any points on said company's main line or extensions, including the extension herein granted; and that said company should sell tickets on its cars as follows: eleven tickets for fifty cents or twenty-two for one dollar; which said grant is still in full force and effect; and your orator says that the main line of said Woodland Avenue & West Side Street Railroad Company referred to in said last mentioned ordinance included the line of railway upon Woodland avenue originally constructed under a grant from the city of Cleveland, which is referred to in a certain ordinance of the said city passed October 17, 1898, and hereinafter set forth.

XV. On or about June 20th, 1892, the said Woodland Avenue & West Side Street Railroad Company entered into an additional contract with the city of Cleveland, evidenced by ordinance duly
10 passed by the city council and accepted by said company, relating to the laying of an additional track on Kinsman street from Woodland avenue southeasterly along said Kinsman street

to the city limits; and in and by said ordinance said company agreed to various requirements, in addition to its existing obligations to the city, with respect to paving upon the street and repaving thereon, and keeping portions of said pavement in repair; and accepted said ordinance and agreed to abide by the terms thereof and to incur the large expenditures made necessary in such compl*a*ince, upon the express condition that it should charge but one fare between any points on said company's main line and extension, and sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar; the rights under said grant to terminate with the then present grant of said company's main line, on the 10th of February, 1908. Your orator says that said grant is still in full force and effect, and that it has complied with all the terms and conditions thereof; that the main line over which it is so authorized to charge a fare of fice cents, and to sell tickets as in said ordinance provided, includes the line upon Woodland avenue (formerly Kinsman street), referred to in the ordinance of the city of Cleveland passed October 17, 1898, and hereinafter set forth.

XVI. Your orator says that in each and every one of the conracts entered into by said Woodland Avenue & West Side Street Railroad Company subsequent to the grant to the Woodland Avenue Company in 1879, relating to the operation of cars from Water street to Madison avenue on Woodland, the said Woodland Avenue & West Side Street Railroad Company and its predecessors gave to the city new and valuable considerations for the grants made, by way of submitting to increased requirements of paving upon the streets, the operation of through cars for the accommodation of the public, and the selling of tickets upon its cars, so that, as respects each of said grants as they were made from time to time, the city upon each occasion received new and adequate consideration
11 for each and all of the rights so granted to said company.

XVII. That, prior to May 13th, 1893, when your orator was formed as a consolidated company, the Cleveland City Cable Railway Company owned and operated lines of street railway upon Superior street by cable power, and lines upon St. Clair street operated by horse power, and, by virtue of grants from the city of Cleveland, said company was authorized, for a period of years which has not yet expired, to operate its said lines, and upon each of them to charge, throughout the entire terms of said grants, a cash fare of five cents; that the ordinances which so authorized it so to do had been duly accepted by said company, and it had expended on the faith thereof hundreds of thousands of dollars in the construction and equipment of its said road; and each and all of the said grants by which it was so operating its said road upon said cash fare of five cents are still in full force and effect.

XVIII. The foregoing being the situation of the two companies forming your orator at the time of said consolidation, and both of said companies having grants and contracts authorizing the operation of their several lines of road, which had not yet expired and

which are still in full force and effect, and which so authorize them and each of them to charge said cash fare of five cents, there was formed, by the consolidation of the two last mentioned companies, your orator as a consolidated company, and, by the terms of said consolidation, it was proposed by your orator to thereafter operate all the lines of said two constituent companies so acquired as an entire system, and to operate through cars thereon and to permit passengers, for one of said cash fares of five cents, to ride from one end of said line so consolidated to the other, and thereafter, and, to the end that it should be duly authorized to carry out such plan, your orator applied to the Common Council of the City of Cleveland, the defendant, for approval of said plan and for permission to so
12 operate its cars, which application is in the words and figures following:

"CLEVELAND, *May* 13, 1893.

To the honorable council of the city of Cleveland, Ohio:

The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company have agreed to consolidate their two lines into the Cleveland City Railway Company; the consolidation to tak- effect June 1st, 1893. It is proposed on June 1st, 1893, to immediately issue proper transfers, without extra charge, so that passengers on any line of the Woodland Avenue & West Side Street Railroad Company may be transferred to and have a continuous passage upon any line of the Cleveland City Cable Railway Company within the limits of the city of Cleveland, and also so that passengers upon any line of the Cleveland City Cable Railway Company may be transferred to and have a continuous ride upon any line of the Woodland Avenue & West Side Street Railroad Company within the city of Cleveland; only one fare to be charged for such ride, and as soon as the necessary improvements can be made, additional cross-town lines will be run and only one fare charged for a continuous ride upon any additional lines within the city of Cleveland.

Respectfully submitted,

WOODLAND AVENUE & WEST SIDE STREET R. R. CO.,
Per M. A. HANNA, *President.*
CLEVELAND CITY CABLE RAILWAY COMPANY,
By FRANK DE H. ROBISON, *President.*

And on May 15th, 1893, the common council of said city duly passed and adopted the following resolution:

"Resolved That the communication from the Woodland Avenue & West Side Street Railroad Company and from the Cleveland City Cable Railway Company, setting forth their consolidation into the Cleveland City Railway Company, be received; and that this council approve such consolidation upon the terms and conditions stated

in such communication, and that such consolidated company shall be subject to all the ordinances and regulations now or hereafter in force."

And your orator shows that ever since said resolution of May 15th, 1893, it has continued the operation of its various lines of street railway as therein contemplated and required, and has continued to charge only the same cash fare of five cents for each passenger, in strict compliance with each of the different contracts which each of said constituent companies had with said city, and which are still in full force and effect.

And your orator at once adopted and put in force the system of transfers contemplated in said council resolution, and has kept on sale tickets at the rate of eleven for fifty cents and twenty-two for one dollar, and has ever since said consolidation been carrying passengers, and is now so doing, over its entire system, with the system of transfers provided for in said resolution, for one cash fare of five cents or tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar.

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XIX. Your orator shows that no one of the grants or contracts aforesaid under which said constituent companies which formed your orator were authorized to operate their various lines of street railway and to charge a cash fare of five cents for each passenger carried thereon, and to sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar, has expired, but your orator alleges the fact to be that each and all of said grants and contracts are in full force and effect; and your orator shows that no one of the grants under which it is operating its various lines of street railway expires before the year 1908, and it has, by the express provisions of said several contracts with the defendant city, the right to so operate its lines of railway during the periods of said grants, and to charge a cash fare of five cents for each passenger carried, or a ticket to be sold by it at the rate of eleven for fifty cents or twenty-two for one dollar.

Your orator further shows that, notwithstanding the provisions of its several contracts with said city of Cleveland and in direct violation and impairment of the same, the defendant, The City of Cleveland, acting under delegated power from the State of Ohio, by the action of its common council on the 17th day of October, 1898, passed an ordinance in the words and figures following, to-wit:

"*Ordinance No.* 22437.

By Mr. Hopkins.

"An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland.

"Whereas, the city council did, on the 25th day of August, 1879, pass an ordinance entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland," by which ordinance said Kinsman Street Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double-track street railroad, commencing on Superior street at the intersection of Water street, thence to and around the southwest corner of Monumental square to Ontario street; thence through Ontario street; to and through a portion of Broadway street to Woodland avenue (formerly Kinsman street); thence through said avenue to Madison avenue subject to certain conditions and limitations; and

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Whereas, it was ordained, as part of these conditions and limitations (section 7), that said companies shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient; and

Whereas, the council does now deem justifiable and expedient a diminution of the rate of fare, therefore,

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines, and all extensions thereof, operated under the aforesaid grant to the said Kinsman Street Railroad Company be and is hereby fixed at four (4) cents cash fare over the whole or any part thereof.

SEC. 2. For the better accommodation of the public, any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

That said ordinance has been signed by the mayor of the city and publication of the same has been made; and the city and its mayor and other officials, and members of the city council declare their

intention to at once enforce against your orator compliance with the provisions of said ordinance, and that, by virtue of the statutes in such cases made and provided, said ordinance goes into effect on Tuesday the first day of November, 1898.

XXI. Your orator further shows that said ordinance of October 17, 1898, so requiring it to carry passengers at a cash fare of four cents and to sell tickets at the rate of seven for twenty-five cents, is in direct violation and contravention of the contract obligations existing between your orator and said defendant, and impairs the contract rights of your orator in this,—that whereas, your orator is entitled, by virtue of its said contracts with said city of Cleveland, to charge upon all of its said lines a cash fare of
15 five cents until the expiration of its several grants, the provisions of said ordinance require your orator to accept a cash fare of four cents; and whereas, your orator is entitled by virtue of its said contracts with the city of Cleveland, to sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar, good for passage upon its cars, said ordinance requires your orator to sell tickets good for passage at the rate of seven tickets for twenty-five cents; and said ordinance so passed by said city council of the defendant City of Cleveland, if enforced, would so impair the contract rights of your orator,—in violation of the Constitution of the United States.

XXII. Your orator further shows that the practical effect and operation of said ordinance is to reduce the rate of fare to be received by your orator to four cents for a cash fare and about three and four-sevenths (3.571) cents for ticket fare; that a cash fare of four cents is an inconvenient and heretofore unknown rate of fare, there being no coin of that denomination, which fact will tend to largely increase the number of passengers who will buy tickets rather than pay such fare of four cents; that experience in the operation of street railways has shown that where there is such a difference in amount between ticket and cash fare, as a matter of convenience, about 70% of passengers use tickets, so that, in practical effect, if said ordinance be enforced, your orator would — obliged to carry about 70% of its passengers at the rate of 3.571 cents and about 30% would pay the cash fare of four cents, whereby the gross receipts of your orator would be reduced more than one-fifth, and, while its gross earnings would thus be reduced more than one-fifth, its operating expenses would remain the same, as no reduction can be made in the operating expenses by reason of the reduction of fare; that the result of compelling your orator to operate under such ordinance would be to diminish its net receipts more
16 than 50%, which fact appears by the following statement of your orator's gross and net earnings for the year 1897 under the existing rate of fare, and a statement of what such gross and net receipts would have been under the operation of said ordinance of October 17, 1898.

In the year 1897 your orator carried

15,627,269 passengers at 5 cents each.....	$781,363.45	
6,697,223 " " 11 for 50 cents...	304,419.23	
Receipts from other passengers.....	195.13	
		$1,085,977.81

Average rate of fare per passenger carried, 4.87 cents.

At the rates of fare sought to be fixed by said ordinance of October 17, 1898, your orator's receipts in 1897 would have been:

15,627,269 passengers at 4 cents.....	$625,090.76	
6,697,223 " " 7 for 25 cents.....	239,186.54	
Receipts from other passengers.....	195.13	
		864,472.43
A reduction of 20.4 %, or.....		$221,505.38

And the average rate of fare per passenger carried, 3.87c.

In order to have made the gross receipts equal to those of 1897, your orator would have been obliged to carry in 1897 5,736,950 more passengers then it in fact did carry.

Assuming, as your orator says may fairly be done, that the use of tickets under the proposed ordinance would largely increase, and that at least 70 % of the passengers who ride would purchase tickets, on the assumption that the proposed rates of fare had been charged in 1897, and that 70 % of the passengers who rode did so upon tickets, then the receipts of your orator would have been as follows:

From 6,697,348 passengers at 4 cents.....	$267,893.92	
" 15,627,144 " " 7 for 25 cts.	558,112.30	
		$826,006.22
A reduction of 24 %, or.....		$259,971.59

Average rate of fare per passenger carried, 3.70 cts.

17 And to have earned at this rate the gross receipts of your orator in 1897, it would have been obliged to carry 7,026,260 additional passengers.

Your orator's gross receipts in 1897 were.....	$1,085,977.81
Its ordinary operating expenses.....	664,463.36
Its net receipts.....	421,514.45
At the present rates of fare, assuming that the same number of passengers would have paid cash, your orator's gross receipts in 1897 would have been.....	864,472.43
Operating expenses.....	664,463.36
Net receipts.....	$200,009.07

That is, for the year 1897, the company would have suffered a loss in income of the difference between $421,514.45 and $200,009.07, viz: $221,505.38; or more than 52.5% of its net income.

At the proposed rates of fare, assuming that 30% of its passengers would have paid cash and 70% would have bought tickets, your orator's gross receipts in 1897 would have been	826,006.22
Its operating expenses	664,463.36
Its net receipts	161,542.86

That is, for the year 1897, the company would have suffered a loss in income of the difference between $421,514.45 and $161,542.86 viz: $259,971.59, or more than 61% of its net income.

And your orator shows that, in the statement above given as to receipts and operating expenses, nothing is included for interest charges, nor for depreciation, nor for renewal, paving, buildings, machinery, rolling stock or other equipment; nothing for dividends or interest on its capital stock, and nothing by way of a sinking fund which should be allowed by reason of the shortness of the franchises of the company, as hereinafter set forth.

XXIII. Your orator shows that, in addition to the expenses and charges entering into the statement of operating as herein-
18 before stated, there is recognized, actual and definite annual depreciation in the value of electric railway property of the character of the property of your orator, amounting to from 10% to 20% per annum, according to the character of the property and material; that is to say, there is each year a depreciation upon the property necessarily in use by your orator of from ten to twenty per cent., and in order to provide for this annual depreciation in the value of property, it is necessary that an annual expenditure, or the setting aside annually of a fund equal to such depreciation, be made; and your orator alleges that, in addition to the cost of carrying on said railway, hereinbefore stated, there should be added annually a sum amounting to more than the sum of one hundred thousand dollars, which rightfully increases to just that amount the annual cost to your orator of the operation of its railway.

XXIV. Your orator further shows that, among the items of annual expenses which have, from the time of the formation of said several companies, required great outlays of money and for which your orator can in no way be reimbursed except as it is permitted to operate said property at a fair and reasonable profit, is the matter of street paving; that, under the provisions of most of the grants under which your orator is operating, it is required of the company to pave and keep in repair certain portions of the streets occupied by your orator's tracks, and, during the twenty years last past, your orator shows that it and its predecessors have invested in street pav-

ing, and as a consideration to the city for grants made to it, in the aggregate about the sum of $1,000,000.00.

XXV. Your orator further shows that, under the laws of the State of Ohio it is not competent for councils of municipal corporations to grant rights to street railway companies for any period of time exceeding twenty-five years, and that all of the grants under which your orator is operating its lines of railway were made to expire at the expiration of twenty-five
19 years from the time the same were made; that the average time which your orator's several grants have yet to run before the termination thereof is about thirteen years, and that the rights of your orator in the streets upon one of its main lines expires in the year 1908; that at the expiration of such grants much of the property of your orator will become greatly depreciated in value, and, in fact, much of it will be of little or no value except as such value is dependent upon the ability of your orator to renew such grants, and as to whether or not such franchises or any of them can be renewed, it is impossible to foretell. Your orator therefore says that, as a matter of ordinary business prudence and in legal fairness and justice in computing the cost of the operation of said railway property and the reasonable income which the owners should receive therefrom, there should be provided each year out of the earnings of the company, in addition to its actual outlay for operating expenses and depreciation of its property as hereinbefore set forth, a sufficient sum to indemnify the stockholders of the company against loss and impairment of the value of their stock and property upon the expiration of said franchises, so far as the value of said stock is dependent upon the continuance of such franchises; and your orator alleges that such annual sinking fund or provision to make good to your orator the loss which it must encounter at the termination of its franchises should be at least the sum of one hundred thousand dollars, and, before it can truthfully be said that your orator is making a profit upon the operation of its road, a sufficient sum should be realized, in addition to the operating expenses, its interest and the annual depreciation of its property, a sinking fund of more than one hundred thousand dollars, to provide for the necessary loss and depreciation in the value of its property upon the expiration of its franchises.

XXVI. And your orator shows and alleges that, based upon the actual experience of your orator in the operation of its said
20 road, if said ordinance of October 17, 1898, were put into operation and your orator compelled to operate its property in compliance with its terms, it will be impracticable and impossible to realize therefrom the actual cost to your orator of maintaining and operating such property; that its bonds would become in default and its entire investment become valueless.

XXVII. Your orator says that no one can predict with any certainty that the gross receipts of your orator, even at the present rates of fare, will be greater in the future than they have been in

the past, or that they will even equal the receipts of the past few years; and that there is no certain basis upon which to found an opinion that the lower rates of fare provided for in said ordinance of October 17th 1898, would increase travel upon your orator's lines and to so prophesy is to indulge in pure speculation without any substantial basis of experience upon which to make such an estimate; and your orator alleges that it would not be practicable or possible, within the life of your orator's franchises, to have such an increase of travel as to enable your orator, under the provisions of said ordinance, to pay its operating expenses and any interest to the bondholders, or any dividends or profit to its stockholders.

XXVIII. Your orator further shows that the cost to your orator of said properties, upon the purchase of the same at the time of said consolidation of the said constituent companies, is represented substantially by the amount of its capital stock now outstanding and the bonded indebtedness at that time assumed, and that upon such amount your orator is entitled to earn and receive, in addition to the operating expenses, including a proper allowance for annual depreciation and the establishment of a sinking fund to cover loss or property upon the expiration of its franchises, such an amount as will pay the interest upon its bonded debt, which average- about five per cent. per annum, and such dividend upon
21 its capital stock as it can earn by the economical management of its property at the rates of fare fixed in its present contracts with said city, such rates being, as your orator alleges, fair and reasonable; that in the commercial markets your orator's bonds are valued at and above par, while its capital stock has at present a market value of about 70% of its par value, which price fairly represents, as your orator alleges, the value of your orator's investment as the same is valued in the commercial markets for railway securities. And your orator says that very much of its stock and many of its bonds are held by companies and persons and estates, who have purchased the same upon such basis of valuation and upon the faith of the contracts existing between your orator and said city of Cleveland.

XXIX. Upon information and belief, your orator alleges that each and all of the properties of the constituent companies which formed your orator were purchased and acquired by such companies at the lowest practicable prices, and that the actual cost in money to the constituent companies and your orator of said properties, which now comprise your orator's investment, exceeded more than $5,500,000.00; and upon information and belief, your orator alleges that the cost to such constituent companies of the several properties represented an investment made in good faith by your orator and the owners of said property before said consolidation, upon which for a long series of years, absolutely no profit at all was realized, and that computing the principal of said investment at 6% interest per annum, the amount thereof aggregate- more than eight millions of dollars, the amount of your orator's authorized

capital stock, and your orator says that, in ordinary business fairness and legal justice, it is entitled to earn reasonable and fair dividends and returns upon said amount in the operation of its said railway system, and that, in any event, returns to your orator, to be reasonable and fair, should not be less than a sum sufficient to pro-
22 vide for the payment of necessary operating expenses, including paving, taxes, reasonable maintenance and improvements, interest upon its bonded indebtedness, annual depreciation, and the establishment of a sinking fund to provide for the indemnity of the stockholders against loss at the expiration of the franchises of said company, and much dividend upon its capital stock as it can reasonably earn under the existing rates of fare provided for in its said several contract- with the defendant, The City of Cleveland.

XXX. Your orator shows that the growth of the city of Cleveland will hereafter from time to time require extensions of your orator's lines of railway, as well as improvements in the operation of the same; that improvements in the operation of electric railways, being constantly made, necessitate frequent changes in the methods thereof and the purchasing of new and improved equipment and appliances, and that in order to maintain said railway property in a proper state of efficiency and to keep pace with growing improvements and invention, it will be necessary to expend large sums of money in renewals, changes in machinery and appliances, in addition to the amount already represented by the outstanding stock and bonds of your orator.

XXXI. Your orator says that the rate of fare which has heretofore prevailed and which is provided for by your orator's existing ordinances and contracts, to-wit: a cash fare of five cents and the sale of tickets good for passage at the rate of eleven for fifty cents and twenty-two for one dollar, is no more than a fair and reasonable charge for the service rendered, and your orator alleges that the volume of its business will not be materially increased by virtue of the operation of said ordinance of October 17, 1898, in reducing the fare as aforesaid, and that there will be no compensation whatever to your orator for such reduction of fare by way of increased business.

23 XXXII. Your orator shows that all of its property was acquired, built, reconstructed and improved upon the best obtainable prices and terms and conditions, and that said lines of railway have been at all times, and are now, operated by your orator as economically as practicable, so that the operating expenses have been and are as reasonable and low in amount as they could be made by economical management; that the services of officers and employees of said company have been secured as cheaply as practicable for good service, and it has no more of such officers and employees than are necessary to conduct its business in an efficient and proper manner. Your orator has at all times yielded to public demand for increased and improved railway service, and, by extending said system through various portions of the city, including out-

lying and sparsely settled districts, the operation of several lines of your orator's railway, while a great benefit to the city, is and has been carried on without profit to your orator, and, in some instances, at a loss, greatly increasing the expense of operation of said system; that the extensive scale upon which your orator is required to operate said road to meet the demands and requirements of the city and its citizens constantly requires large amounts for improvements and extensions, and your orator alleges that it is now giving, and has at all times during its operation of said railway properties given, to the people of Cleveland a modern, improved, and well-conducted railway service, and that the prices which it is charging therefor are just and reasonable.

XXXIII. Your orator shows that said ordinance of October 17, 1898, by which it is so undertaken to reduce the fare which your orator is entitled to charge as aforesaid, is void, because contrary to and in violation of the Constitution of the United States; that said ordinance, as hereinbefore shown, if enforced or put into operation and effect, does and will deprive, your orator of its property without due process of law, and will take and have the effect
24 of taking, the property of your orator for public use without compensation in contravention and violation of the Constitution of the United States, and especially section *i* of article 14 of the amendments to the Constitution of the United States.

XXXIV. Your orator further shows that, before it could at law demonstrate the invalidity of said ordinance by adjudication upon the same, a multiplicity of suits would ensue, and great inconvenience and conflict and trouble would arise from the refusal of your orator to recognize the validity of said ordinance; that said ordinance will go into effect by its terms on November 1st, 1898, the expiration of the ten days' legal publication thereof required, unless said City of Cleveland be restrained therefrom by this court; and your orator will be compelled to submit to and carry out said ordinance unless the defendant be so restrained, and that if your orator should refuse to submit to and comply with said ordinance, in the absence of an injunction restraining its enforcement, the city, through its mayor, common council and law department, with their employees and representatives, will, as your orator is informed and believes and alleges, proceed to enforce said ordinance and put the same into immediate effect, and compel your orator to comply therewith by taking steps and measures to forfeit or attempt to forfeit the charter, franchises and privileges so owned by your orator, for alleged violation of said ordinance of October 17, 1898, and institute, or cause to be instituted, suits or other proceedings against your orator, its officers, conductors, or agents, with the design of putting said ordinance into operation and effect, and of compelling your orator, its officers, conductors, or agents, to accept such cash fare of four cents and to sell tickets, good for passage upon its cars, at the rate of seven for twenty-five cents; and upon your orator's refusal so to do, will make complaints and charges of violation of said ordi-

nance and prosecute and institute proceedings to forfeit the charter, franchises and privileges of your orator, and to annul its
25 corporate existence, for alleged violation of said ordinance. Your orator says that an attempted enforcement of said ordinance would result in personal conflicts and altercations between passengers and conductors, with consequent breaches of the public peace and arrests and probable disturbance-, and that great and permanent loss of business and good will would follow from such conflicts and disturbances; that a multiplicity of suits would arise on the part of the defendant city and its citizens and passengers on the roads of your orator, in different courts at the same time, and your orator will be put to great expense and trouble and loss in defending suits in various courts, leading to uncertainty or complications as to the rights of the said city of Cleveland and your orator in the premises; that public interest and welfare and the rights of your orator require the trial and adjudication of such rights and duties in one form, and that, in equity and good conscience, your orator should not be subjected to the great loss, expense, inconvenience and damage to which it will be subjected by the enforcement, or attempted enforcement, of said alleged ordinance; and your orator says that it has no adequate remedy at law to protect itself against the enforcement of said ordinance.

XXXV. In consideration whereof, and inasmuch as your orator is without remedy at law in the premises, and can have adequate relief only in a court of equity, to the end, therefore, that the defendant herein may answer the several matters and things hereinbefore set forth, and that this court may decree that said ordinance of said city, entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;" passed October 17, 1898, is null and void and of no effect with respect of your orator and that said ordinance and the
26 change of fare provided thereby and the provisions thereof are unreasonable, unfair, unconstitutional and void. Your orator prays that the City of Cleveland and the mayor and the common council of said city, and all officers, agents, attorneys employés, representatives, and departments of said city and their respective agents, representatives and employees, and the director of law of said city and his associates and his assistants and agents, and their respective successors in office, be perpetually enjoined, restrained and prohibited from putting said alleged ordinance into effect, and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding, against your orator or any conductor or employee, or any officer, representative or agent of your orator, the object or purpose of, or relief, sought by, said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel your orator or any officer, rep-

resentative, conductor or agent of your orator, to accept the cash fare provided for in said ordinance, or to sell tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof, and from instituting or prosecuting any action or proceeding for violation of said alleged ordinance or any part thereof, and from proceeding with or continuing any action or proceeding for violation of said alleged ordinance or any part thereof; *and from proceeding with or continuing any action or proceeding for violation of said alleged ordinance or any part thereof,* whether complaint be made or said action be instituted by or on behalf of said city of Cleveland or any other persons; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any five, penalty or forfeiture for violating said ordinance or any part thereof; and from bringing any suit, action or proceeding for the purpose
27 of vacating the charter or annulling the existence of your orator as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof, or any of its provisions.

And your orator prays that, in the meantime and during the pendency of this suit, said City of Cleveland, the mayor and common council of said city, and all officers, agents, employees, representatives and departments of said city and their respective agents, representatives and employees, and the director of law and his assistants, representatives, agents and employees, be enjoined and restrained as hereinbefore prayed, and that your orator may have such other and further relief as the nature of the case may require and as to equity may appertain.

May it please to grant unto your orator a writ of subpœna to be issued out of and under the seal of this honorable court, directed to the said defendant, The City of Cleveland, commanding said defendant to appear in this court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND CITY RAILWAY CO.,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

SQUIRE, SANDERS & DEMPSEY,
Counsel & Sol'rs.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Marcus A. Hanna, being duly sworn, says that he is president of The Cleveland City Railway Company the complainant in the foregoing bill of complaint; that he makes this affidavit as such

officer on behalf of the said company; that he has read the
28 said bill-of-complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters and things therein stated upon information and belief, and as to those matters, he believes them to be true.

MARCUS A. HANNA.

Sworn to before me by the said Marcus A. Hanna, and by him subscribed in my presence this 28th day of October, A. D. 1898.

CLARENCE E. SANDERS,
[SEAL.] *Notary Public.*

Endorsements on bill of complaint: No. 5839. The Cleveland City Railway Company, *vs.* The City of Cleveland. Bill of complaint. Filed Oct. 29, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, sol'rs for compl't.

29 *Subpœna in Chancery.*

UNITED STATES OF AMERICA, *Northern District of Ohio,* } ss:

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon the City of Cleveland, a citizen of and resident in the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the northern district of Ohio, aforesaid, at Cleveland, on the first Monday in January next, to answer a certain bill in chancery, filed and exhibited in said court, against it by the Cleveland City Railway Company, a citizen of and resident in the State of Ohio.

Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of October, A. D. 1898, and in the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk,*
By JNO. VAN NOSTRAN,
[SEAL.] *Deputy Clerk.*

Memorandum.

The said defendant is required to enter its appearance in this suit in the clerk's office of said court on or before the first Monday of December, 1898, otherwise the said bill may be taken *pro confesso.*

IRVIN BELFORD, *Clerk.*

Endorsements on subpœna in chancery—when issued: United States circuit court, northern district of Ohio. No. 5839.
30 The Cleveland City Railway Company, *vs.* The City of Cleveland. Subpœna in chancery. Appearance day, first Monday in December, 1898. Answer day, first Monday in January, 1899. Squire, Sanders & Dempsey, complainant's attorneys.

Endorsements on subpœna in chancery—when returned:

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, *Northern District of Ohio,* } *ss:*

Received this writ on the 29th day of October, 1898, and on the same day, I served the same at Cleveland, on the within named The City of Cleveland, by delivering a true and certified copy thereof to Robert E. McKisson, mayor and chief executive of said municipal corporation.

M. A. SMALLEY,
U. S. Marshal,
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Returned and filed Nov. 1, 1898,

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

31 *Order to Show Cause, etc.*

October Term, A. D. 1898, to wit, October 29, 1898.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting under designation, and Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RAILWAY COMPANY *vs.* THE CITY OF CLEVELAND. } No. 5839. Chancery.

Upon the filing of the bill of complaint herein, duly verified, and upon motion of complainant, it is ordered that the defendant, The City

of Cleveland, appear in this court on the first day of December, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, and show cause why a temporary injunction should not be issued as prayed for in the bill of complaint herein, and it is further ordered that, in the meantime and until a determination of the court on said order to show cause as to whether a temporary injunction shall issue herein, the defendant, The City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys, employees, representatives and departments of said city and their respective representatives, agents and employees, and the director of law of said city and his assistants and representatives, be enjoined and restrained as in said bill of complaint prayed; and particularly from putting an ordinance in said bill of complaint described and entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled: 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;'" passed October 17th, 1898, into effect; and from instituting or authorizing or directing any suit or suits, action or actions, or any pro-
32 ceeding or proceedings, against the complainant or any conductor or employee or any officer or agent of the complainant, the object or purpose of which or the relief sought by which, is to put said alleged ordinance into effect or to enforce any of its provisions, or to compel the complainant or any of its officers, agents or employees to accept tickets or accept fares as in said ordinance provided; and from making any complaint for violation of said alleged ordinance on the part of complainant or any of its officers, agents or employees; and from instituting any suit or proceeding or action of any character whatever for the purpose of enforcing the provisions of said ordinance or subjecting the complainant or any of its officers, agents, servants or employees to any penalty or forfeiture or punishment for violation of said alleged ordinance or any part thereof; and until the court shall so determine the question of issuing a temporary injunction as prayed for in said bill of complaint, it is ordered that said ordinance of October 17th, 1898, shall not be binding upon or operative against said complainant. And it is ordered that complainant give bond to approval of the clerk in the sum of twenty-five thousand dollars conditioned according to law.

Certified Copy of Order to Marshal for Service.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tues-

day in October, being the 4th day of said month, in the year of our Lord one thousand eight hundred and ninety-eight and of the Independence of the United States of America the one hundred and twenty-third, to-wit: on Saturday, the 29th day of October, A. D. 1898.

33 Present: The Honorable E. S. Hammond, U. S. district judge, sitting under designation, and Honorable Augustus J. Ricks, U. S. district judge.

Among the proceedings then and there had, were the following, to-wit:

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

Upon the filing of the bill of complaint herein, duly verified, and upon motion of complainant, it is ordered that the defendant, The City of Cleveland, appear in this court on the first day of December, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, and show cause why a temporary injunction should not be issued as prayed for in the bill of complaint herein, and it is further ordered that, in the meantime and until a determination of the court on said order to show cause as to whether a temporary injunction shall issue herein, the defendant, The City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys, employees, representatives and departments of said city and their respective representatives, agents and employees, and the director of law of said city and his assistants and representatives, be enjoined and restrained as in said bill of complaint prayed; and particularly from putting an ordinance in said bill of complaint described and entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled: 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;" passed October 17th, 1898, into effect; and from instituting or authorizing or directing any suit or suits, action or actions, pr any proceeding or
34 proceedings, against the complainant or any conductor or employee or any officer or agent of the complainant, the object or purpose of which or the relief sought by which, is to put said alleged ordinance into effect *to* to enforce any of its provisions, or to compel the complainant or any of its officers, agents or employees to accept tickets or accept fares as in said ordinance provided; and from making any complaint for violation of said alleged ordinance on the part of complainant or any of its officers, agents or employees; and from instituting any suit or proceeding or action of any character whatever for the purpose of enforcing the provisions of said ordinance or subjecting the complainant or any

of its officers, agents, servants or employees to any penalty or forfeiture or punishment for violation of said alleged ordinance or any part thereof; and until the court shall so determine the question of issuing a temporary injunction as prayed for in said bill of complaint, it is ordered that said ordinance of October 17th, 1898, shall not be binding upon or operative against said complainant. And it is ordered that complainant give bond to approval of the clerk in the sum of twenty-five thousand dollars conditioned according to law.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States, within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original restraining order entered upon the journal of the proceedings of said court in the therein entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness, my official signature and the seal of said court, at Cleveland, in said district, this 29th day of October, A. D. 1898,
35 and in the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
By JNO. VAN NOSTRAN,
Deputy Clerk.

[SEAL.]

Endorsements on order to show cause,—when issued: No. 5839. United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company, *vs.* The City of Cleveland. Certified copy of restraining order.

Endorsements on order to show cause,—when returned:

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, *Northern District of Ohio,* } *ss:*

Received this writ on the 29th day of October, 1898, and on the same day, I served the same at Cleveland, on the within named The City of Cleveland, by delivering a true and certified copy thereof to Robert E. McKisson, mayor and chief executive of said municipal corporation.

M. A. SMALLEY,
U. S. Marshal,
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Filed Nov. 1, 1898,

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

Restraining Order Bond.

Know all men by these presents, that we, The Cleveland
36 City Railway Company and M. A. Hanna are held and firmly bound unto the City of Cleveland in the sum of twenty-five thousand dollars, to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 31st day of October, A. D. 1898.

The condition of the above obligation is such that, whereas the said The Cleveland City Railway Company, a citizen of the State of Ohio, has filed in the circuit court of the United States for the northern district of Ohio, a bill in chancery against the said The City of Cleveland and has obtained an allowance of a restraining order as prayed for in said bill, from the Honorable Augustus J. Ricks, U. S. district judge, and a judge of said court.

Now if the said The Cleveland City Railway Company shall abide the decision of said court in said cause, and pay all moneys and costs which shall be adjudged against it in case the said restraining order shall be dissolved, then these presents shall be void; otherwise to remain in full force.

THE CLEVELAND CITY RAILWAY CO.,
By M. A. HANNA, *Pres't.* [SEAL.]
M. A. HANNA. [SEAL.]

Endorsements on bond for restraining order: U. S. circuit court, northern district of Ohio. No. 5839. The Cleveland City Railway
Company *vs.* The City of Cleveland. Restraining order bond.
37 Approved and filed Oct. 31st, 1898, Irvin Belford, clerk.

Order Continuing Order to Show Cause.

October Term, A. D. 1898, to-wit, December 1, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

The parties consenting, it is ordered that the hearing on the return of the order heretofore issued to show cause why a temporary injunction should not issue as prayed for in the bill, be adjourned for hearing until the 17th day of December, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard. It is further ordered that, until the hearing and determination on said order to show cause of the question of the issue of a temporary injunction herein, the restraining order heretofore issued in this cause, be and the same is continued in full force and effect.

Answer of Defendant.

38 No. 5839.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } 5839. Answer of the City of Cleveland.

The defendant, The City of Cleveland, saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in the bill of complaint herein, for answer thereto avers and says:

It admits that the complainant and the defendant are citizens of the State of Ohio, that the complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the city of Cleveland; and that the defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and that in respect to the matters and things set forth in the bill of complaint as to the ordinances affecting the complainant, this defendant acts, and acted under delegated power from the legislature, except in so far as the last named admission may hereafter be expressly qualified or denied Further answering paragraph one of said bill defendant, while ad-

mitting, that, acting under delegated power from the legislature of the State of Ohio, it has passed and adopted ordinances, granting to the complainant and its predecessors in interest, the right to construct and operate various lines of railway in said city, de-
39 nies that the alleged ordinances set forth and referred to in said bill of complaint constitute contracts between complainant and defendant; and denies that all the provisions of each and all of said alleged ordinances were within the powers of this defendant, delegated to it by the legislature of the State of Ohio, as hereinafter more specifically set forth.

Defendant answering paragraph two of said bill denies that the amount in controversy in this action, exclusive of interest and costs, is more than five thousand dollars, and that it is a controversy arising under the Constitution of the United States. It admits that complainant, by its bill, seeks relief, by reason of an attempt on the part of the defendant to enforce against complainant a law of the State of Ohio; but the defendant denies that the said law of the State of Ohio impairs the contract rights of the complainant, and it denies that the operation of said law, if permitted, would take from complainant its property without due process of law and deny to it the equal protection of the law, in contravention and violation of the Constitution of the United States, or of section one of article fourteen of the amendments to said Constitution, or section ten of article one of said Constitution.

Defendant further answering admits that the complainant is a consolidated railway formed in 1893 by the consolidation of the two constituent companies named in paragraph three of said bill. It says it is not informed, save by said bill, of the amount of the capital stock of complainant, or how much thereof is issued; but it denies that the capital stock of complainant is eight million dollars, and denies that $7,600,000 of the same, is or has been issued; it denies that complainant has outstanding a bonded indebtedness, secured by mortgage on one of its constituent lines amounting to $2,026,000. Defendant avers that if such capital stock and mortgage indebtedness, to the amounts named in said bill, to-wit: $7,600,000 and
$2,026,000, respectively, has been issued, as averred by said
40 bill, that the same does not represent money which has been invested in complainant's property, and defendant alleges that the aggregate amount of said capital stock and bonded indebtedness is far in excess of complainant's actual investment in money in its property, and of the value of its property, either at the present time or at any time since complainant's organization; and defendant further says that said aggregate amount is far in excess of the value of the property and actual money investment of both of the constituent companies, which in 1893, formed, by consolidation, the complainant company.

Defendant further avers that a large amount, to wit: more than two-thirds of complainant's capital stock and bonded indebtedness

is fictitious and watered and is not based upon any value whatever, or upon any investment whatever.

It admits that by such consolidation, the complainant became, and is possessed of all the rights, franchises, privileges and property theretofore possessed by said constituent companies and each of them, but it avers and says that, by such consolidation, the complainant succeeded to, assumed, and thereby became and is, subject to all the duties, obligations, liabilities, conditions, limitations and restrictions to which both of said constituent companies were and had been subject, and which were and had been imposed upon them, and both of them, prior and up to the time of such consolidation.

Defendant admits as stated in paragraph four of said bill, that each of said constituent companies consolidated, was operating its respective lines of street railway under ordinances passed by the city of Cleveland in pursuance of power delegated to it by the legislature of the State of Ohio; but defendant alleges that all of the provisions of said ordinances were not, did not become, and are not binding on said city, for the reason that some of said ordinances were and are beyond the power delegated by the legislature of the State of Ohio, to said city, were and are *ultra vires*, illegal and
41 void as hereinafter stated.

Defendant admits that the Woodland Avenue & West Side Street Railroad Company was organized in 1885, and was a consolidated company formed by the consolidation of two constituent companies, each of which, prior to said consolidation, owned and operated the two lines of street railway named in said bill, to wit: the West Side Street Railroad Company and the Woodland Avenue Railway Company, and it further admits that the Woodland Avenue Railway Company was the successor, by purchase, of the Kinsman Street Railroad Company at or about the time stated in paragraph five of said bill.

For answer to paragraph six of the bill defendant admits that by the terms of the consolidation in 1885 of the said two constituent companies, said consolidated company known as the Woodland Avenue & West Side Street Railroad Company became vested with all and singular the property, rights, privileges and franchises of said two constituent companies. But defendant avers that by such consolidation the said The Woodland Avenue & West Side Street Railroad Company succeeded to, assumed, and thereby became subject to all the duties, obligations, liabilities, conditions, restrictions and limitations to which each of said constituent companies were and had been subject *to*, and which were and had been imposed upon them, and each of them, and each line thereof, prior and up to the time of such consolidation, and assumed and became subject, as well, to all the conditions, obligations, liabilities, restrictions and limitations imposed upon said The Kinsman Street Railroad Company prior to its purchase by the said The Woodland Avenue Railway Company.

And for answer to paragraph seven of said bill defendant admits

that the St. Clair Street Railroad Company and the Superior Street Railroad Company were each corporations organized under the laws of the State of Ohio and prior to the formation of the Cleve-
42 land City Cable Railway Company, owned and operated lines of street railway in the city of Cleveland. And defendant admits that the Cleveland City Cable Railway Company was the successor, by purchase to all the property, rights, privileges and franchises of the said The St. Clair Street Railroad Company and the said The Superior Street Railroad Company, but defendant avers that the said The Cleveland City Cable Railway Company, by virtue of said purchase and succession, also became and was subject to all the conditions, obligations, liabilities, limitations and restrictions imposed upon each of said companies, and each line thereof, prior to such purchase and succession.

Defendant admits, as stated in paragraph eight of the bill, that by virtue of the consolidation of the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company in 1893, the complainant company became vested with all the property, rights, privileges and franchises of said constituent companies, and of each and all of the companies therein mentioned. And further answering paragraph eight of said bill defendant avers that by virtue of said consolidation in 1893, the complainant thereby assumed, and thereby became, and is subject to all the conditions, obligations, liabilities, restrictions, and limitations to which the said The Woodland Avenue & West Side Street Railroad Company, The Cleveland City Cable Railway Company, The Woodland Avenue Railway Company, The West Side Street Railroad Company, The Superior Street Railroad Company, The St. Clair Street Railroad Company, and The Kinsman Street Railroad Company had been subject *to* prior to said consolidation in 1893, and that by virtue of such consolidation in 1893, the complainants assumed all of the conditions, obligations, liabilities, limitations and restrictions which had been im-
43 posed upon each of said last named constituent companies, and upon each line of said constituent companies,

For answer to paragraph nine of the bill defendant admits that prior to the year 1885 the lines of railway operated by the Woodland Avenue Railway Company and the lines of the West Side Street Railroad Company were independent lines of street railway, the one operating lines of street railway chiefly upon the east side and the other upon the west side of the Cuyahoga river; that it is not informed, save by said bill, as to the situation with reference to the exchange of traffic between said companies, and it therefore denies and demands proof of each and every allegation and averment contained in paragraph nine of said bill not herein expressly admitted or denied.

And for answer to paragraph ten of the bill it denies that at the time of the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company, the said West Side Street Railroad Company had a right, by ordinance from the de-

fendant city, to charge a cash fare of five cents for each passenger carried, for the term of twenty-five years from February 1883, or for any other term or time. Defendant denies that the Woodland Avenue Railway Company was operating its line of road under several grants from the city of Cleveland as stated in said bill, and as to the averments in paragraph ten in said bill with reference to the grant made in 1879, defendant avers and says, that on the 25th day of August, 1879, the council of the city of Cleveland, passed an ordinance entitled, "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland."

That section seven of said ordinance is as follows:—

"SEC. 7. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation
44 for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient."

That section 14 of said ordinance is as follows:—

"SEC. 14. That in case of failure by neglect or otherwise on the part of said Kinsman Street Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance, together with all and singular the general ordinance and the future ordinances of the city in relation to said road, the privileges hereby granted and renewed shall become void and of no effect, and shall cease upon the adoption of a resolution of council to that effect."

That upon the passage of said ordinance the said The Kinsman Street Railroad Company accepted the same and thereafter operated and maintained its line of street railway thereunder. That its line of street railway as it existed at that time, commenced on Superior street at the intersection of Water street in the city of Cleveland and run thence to and around the south east corner of Monumental square to Ontario street; thence through Ontario street to and through a portion of Broadway; thence to Woodland avenue and thence along and upon Woodland avenue to Madison avenue. It avers that the Kinsman Street Railroad Company continued to maintain and operate its said line of street railroad under and by virtue of the provisions of said ordinance of August 25th, 1879, until the same was purchased by the Woodland Avenue Railway Company about the year 1880; and that the said The Woodland Avenue Railway Company, immediately upon said purchase, began, and thereafter continued, to operate said line of railway with its extensions in and by virtue of the provisions of said ordinance of August 25th, 1879, until about the year 1885, when the said The Woodland Avenue Railway Company, and the said The West Side Street Railroad Company were consolidated and by such consolidation
45 formed the Woodland Avenue & West Side Street Railroad Company; that immediately upon such consolidation in

1885, the said The Woodland Avenue & West Side Street Railroad Company, began, and thereafter continued, to maintain and operate the said line of railway, with its extensions, under and by virtue of the provisions of said ordinance of August 25th, 1879, until the year 1893, when the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company consolidated, and by such consolidation formed The Cleveland City Railway Company, the complainant herein; and that immediately upon such last named consolidation in 1893, complainant herein began to maintain and operate, and has ever since continued to maintain and operate, and is now maintaining and operating the said line of railway with its extensions under and by virtue of the provisions of said ordinance of August 25th, 1879. Defendant admits the passage in 1883 of the ordinance referred to in paragraph ten of complainant's bill, entitled "An ordinance to permit the Woodland Avenue Railway Company to extend its line of railway on Woodland avenue from the Cleveland & Pittsburgh Railway crossing to Corwin street." Defendant denies that in and by said ordinance said city and said Woodland Avenue Railway Company entered into a new contract; and it denies that in and by said ordinance said company agreed to new conditions and requirements; and it denies each and every allegation and averment contained in paragraph ten of complainant's bill not hereinbefore specifically admitted or denied.

Defendant avers that the ordinance for the said extension to Corwin street was passed May 14th, 1883, and that section one thereof is as follows:—

"SECTION 1. Be it ordained by the council of the city of Cleveland, That the Woodland Avenue Railway Company be and is hereby authorized and empowered to extend its line of railway from the present track on Woodland avenue at the Cleveland & Pittsburgh Railroad crossing easterly on and along said Woodland
46 avenue to Corwin street, and to equip and operate said extension as a single track railway, with all the necessary switches, turn-outs and turn-tables, in connection with its main line and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company or any part of its main line or on said extension, by reason of said extension, so that but one fare shall be charged between the eastern terminus of said extension and the western terminus of its main line, provided, that said extension shall be completed within three months after the passage of this ordinance."

Defendant denies that in and by said ordinance the said, The Woodland Avenue Railway Company, was granted the right to charge one fare of five cents over its entire line; or that in and by said ordinance it was granted the right to charge a fare of five cents at all, and avers that the fare or rates of fare is neither fixed nor referred to in said ordinance, except that it is provided that but one fare shall be charged between the easterly and the westerly terminus of said company's main line as extended.

And further answering paragraph ten of said bill defendant says, that under and by virtue of the laws of the State of Ohio and the ordinances of the city of Cleveland the rights, privileges and franchises of the Kinsman Street Railroad Company to maintain and operate its lines of railway were limited to expire within a certain specified period of time; that on the date referred to in said bill, to wit: August 25th, 1879, said rights and franchises over the route described in paragraph seven of said bill, had nearly if not entirely expired; and without an extension or renewal of the period of the life of such rights and franchises the said The Kinsman Street Railroad Company, would, at or about said date, have been compelled to abandon the maintenance and operation of its said lines of railway, and would have been deprived of all the prof-
47 its and emoluments accruing from the operation and maintenance of the same; and further answering defendant says, that on the 27th day of March, 1866, the legislature of the State of Ohio passed an act entitled, "An act to amend 'An act to provide for and regulate street railroad companies,' passed April 10th, 1861, and supplementary thereto," (Ohio Laws vol. 58, page 66), which among other things provided that no ordinance, right or franchise to construct, maintain or operate a street railway in any municipal corporation should be given or granted until the council or other legislative body of such municipal corporation should first advertise for and receive competitive bids for the construction, operation, and maintenance of the same; and that thereupon such right and franchise should only be granted to the person or corporation offering to carry passengers at the lowest rate of fare.

Defendant further says that said act with amendments thereto has been in full force and effect as a law of the State of Ohio continuously ever since the 27th day of March, 1866, but that the said The Kinsman Street Railroad Company had avoided the competition as to rates of fare, provided for in said law by reason of the fact that it had secured its original franchise from the city of Cleveland prior to the passage of said act.

For the benefit and in the interest of the Kinsman Street Railroad Company, and other railroad owners and operators similarly situated, on account of the near approach of the date of the expiration of their franchises, and for the purpose of enabling them to avoid the competition as to the rates of fare provided for in the aforesaid act, the legislature of the State of Ohio, passed another act, to wit: the act of June 12th, 1879, entitled "An act to amend sections 4 and 5 of chapter 5, of division 8, of the act entitled 'An act to amend, revise and consolidate the statutes relating to mu-
48 nicipal corporations, to be known as title 12, part 1, of the act to revise and consolidate the General Statutes of Ohio,' passed May 14, 1878. (O. L., vol. 75, page 359)," which among other things provided, that the council of any city of the first and second grades of the first class might by ordinance renew any street railway grant or franchise at its expiration for a period not to ex-

ceed twenty-five years from the date of such grant or renewal of a grant, upon such terms and conditions as they may consider conducive to the public interests.

In this situation the said The Kinsman Street Railroad Company, for the purpose of securing an entirely new franchise, for the purpose of providing against the consequences of the expiration of its then existing franchises, and for the purpose of avoiding and evading the law providing for competitive bidding, and the granting of such franchises to the person or corporation proposing to carry passengers at the lowest rate of fare, applied to the council of the city of Cleveland for a renewal of its franchise under the provisions of said act of June 12th, 1879, and on the 25th day of August, 1879, said council granted such renewal by ordinance of said date for the period of twenty-five years therefrom. Defendant avers and says, that thereafter the said The Kinsman Street Railroad Company and its successors heretofore named, commenced and continued the operation of its lines of road under and by virtue of the provisions of said ordinance of September 15th, 1879.

Therefore, defendant says, that in and by said ordinance the city reserved to itself the right to reduce and regulate the rate of fare to be charged by said company on its lines of railway, for the full period of said grant.

Defendant further answering says, that in addition to the provisions of the act of the legislature of the State of Ohio, of date June 12th, 1879, hereinbefore recited, it was further provided
49 in and by said act that after the grant or renewal of a grant, therein provided for, was made, the council should not have power, and were expressly prohibited, from releasing the grantee from any obligation or liability imposed by the terms of such grant, or renewal of a grant. Defendant avers that neither the ordinance of May 14th, 1883, nor any other ordinance either prior or subsequent thereto released, or *were* intended or understood to release, said company or its successors, from any of the provisions and conditions of said ordinance of August 25th, 1879; that neither the ordinance of May 14th, 1883, nor any other ordinance waived, supreseded, affected or diminished the right, and power, of the city to reduce the rate of fare reserved to it under the provisions of the ordinance of August 25th, 1879; and that under and by virtue of the limitations heretofore referred to in the act of the legislature of the State of Ohio the council of the city of Cleveland had no power to release said company, or any of its successors in interest, from the operation of any obligations or liabilities imposed by the terms of said ordinance, and such release or attempted release is *ultra vires*, illegal and void.

Further answering defendant says, that in and by said ordinance of May 14th, 1883, said Woodland Avenue Railway Company was granted the right to extend its tracks by building an additional track on Woodland avenue from the Cleveland & Pittsburgh railroad crossing east to Corwin street; that under and by virtue

thereof said company constructed and operated such additional tracks from the Cleveland & Pittsburgh railroad crossing easterly to Corwin street, as an *extension* of its line from Superior and Water streets to Madison avenue, being the line maintained and operated under the ordinance of August 25th, 1879.

That said company constructed such extension for its own benefit, and sought and solicited the privilege of constructing the same
50 from the council of the defendant city, on account of the increased traffic and patronage such extension would bring to it.

Defendant says that the ordinance for such extension was passed by the council of defendant city under authority of an act of the General Assembly of the State of Ohio passed May 7th, 1869, entitled "An act supplementary to 'An act supplementary to an act to provide for and regulate street railroad companies,' passed March 27th, 1866. (S. & C. 137, and S. C., 280, 281)," (vol. 66, Laws of Ohio, page 140), and all amendments thereto, providing for such extensions, but in and by which it was expressly provided that the charge for carrying passengers should not be increased over the whole or any part of the main line so extended, or on or over its connections with existing lines by consolidation.

Defendant avers that by virtue of the aforesaid act, and by operation of law it became, and was, the duty of said The Woodland Avenue Railway Company, after the construction of such extension, to give passengers one continuous ride for one fare over the whole of said line, as extended, viz: from the westerly to the easterly terminus of said company's line, as extended, and *vice versa*.

That in so far as said ordinances undertook to make a contract with said company that passengers should be carried from one end to the other of said line as extended, for one fare the same is and was without consideration on the part of the city; and defendant avers that giving passengers one continuous ride for one fare, between the points named, was no part of the consideration for which such extension grant was made—the same having been provided for by the laws of the State of Ohio.

Defendant for answer to paragraph eleven of the bill says, that it is not informed, save by said bill, as to the plan of the Woodland Avenue & West Side Street Railroad Company at the time of its organization and consolidation, and it therefore
51 denies the allegations of said bill with reference to such plan, and demands proof thereof; it admits the passage of the ordinance set forth in said paragraph entitled "An ordinance to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company, and said companies may be consolidated;" it denies that said ordinance fixed the rate of fare to be charged upon such consolidated company's lines or any part thereof, and denies each and every other allegation contained in paragraph eleven, not hereinbefore expressly admitted or denied; and defend-

ant further answering says, that under and by virtue of the laws of the State of Ohio then in force, providing for the consolidation of street railway companies, it was the duty of the Woodland Avenue & West Side Street Railroad Company, immediately upon, and after, said consolidation to give passengers a continuous ride over its entire line, as consolidated, for one fare not to exceed the maximum rate of fare charged over any of the lines of the constituent companies prior to the consolidation. Defendant says that the ordinance heretofore referred to, providing for such consolidation, did not fix or attempt to fix the rate of fare to be charged by said consolidated company over its lines as consolidated. That in so far as said ordinance fixed, or undertook to fix, said rate or rates of fare the same was *ultra vires*, illegal and void, for the reason that such terms and conditions were fixed and regulated by operation of law and resulted from such consolidation. Defendant further says that said ordinance did not surrender, waive, release or diminish the right of the city to reduce, or diminish, the rate of fare to be charged by said consolidated company over any of its lines, and particularly over its former Woodland Avenue line, which had been and was maintained and operated under and by virtue of the provisions of the ordinance of August 25, 1879, hereinbefore referred to, and that notwithstanding, the provisions of the ordinance set forth in paragraph eleven of the bill, all of the provisions and conditions
52 of said ordinance of August 25th, 1879, still remain in full force and effect.

For answer to paragraph- twelve and thirteen of said bill defendant admits the passage of the ordinance of April 8, 1887, providing for an additional track in Franklin avenue, and the passage of the ordinance of August 12, 1887, providing for the extension of the track in Franklin avenue and Waverly avenue, and denies each and every other allegation contained in said paragraphs twelve and thirteen; and further answering defendant avers that said two last named extensions were constructed, operated and maintained as extensions of said company's west side line, formerly owned by the West Side Street Railroad Company and not as extensions of said company's Woodland Avenue line, formerly owned by the Woodland Avenue Railway Company; that they were not extensions of any part of the Woodland Avenue & West Side Street Railway Company's lines which were or ever had been operated and maintained under and by virtue of the provisions of the ordinance of August 25th, 1879.

And further answering it avers that the ordinances providing for such extension did not, and do not, fix the rate of fare on any part of said company's lines; that they did not and do not release said company from the operation of any of the provisions of the ordinance of August 25th, 1879; and that they did not and do not constitute a new contract or agreement with the city in relation to fare; that under and by virtue of the laws of the State of Ohio, immediately upon such extension being constructed, it became and was

the duty of said The Woodland Avenue & West Side Street Railroad Company to give passengers a continuous ride over the whole of its lines, as extended, for one fare.

For answer to paragraph fifteen of said bill defendant admits the passage on June 20, 1892, of an ordinance permitting
53 the Woodland Avenue & West Side Street Railroad Company to construct an additional track in Kinsman street from Woodland avenue southeasterly to the city limits, and denies each and every other allegation contained in said paragraph fifteen. And further answering defendant avers that said additional track was constructed, maintained and operated as an extension of the line maintained and operated under and by virtue of the provisions of the ordinance of August 25th, 1879. Defendant denies that said ordinance of June 20, 1892 was a new or additional contract between the city of Cleveland and the Woodland Avenue & West Side Street Railroad Company; it denies that any new or additional contract was made in and by said ordinance between said city and said company; it avers that neither the provisions of said ordinance nor the provisions of any other ordinance surrendered or waived the right of the city to reduce or diminish the rate of fare to be charged by said company, on and over its Woodland Avenue line, reserved to the city under and by virtue of the provisions of the ordinance of August 25th, 1879; that the council of the city of Cleveland had no power to surrender, or waive such right or release said company from any of the provisions and conditions of said ordinance of August 25th, 1879, and that in so far as the ordinance of June 20th, 1892, undertook to waive, release or surrender such right of the city the same is *ultra vires*, illegal and void; and that under and by virtue of the provisions of the law of the State of Ohio, then in force, it became and was the duty of said company to give passengers a continuous ride over the entire length of its said Woodland Avenue line, as extended under the provisions of the ordinance of June 20th, 1892, for one fare, and that any attempt to fix the rate of fare under and by said ordinance of June 20th, 1892, was wholly without consideration, illegal and void.

For answer to paragraph sixteen of complainant's bill defendant denies each and every allegation therein contained, and
54 further answering avers that each and every one of the extensions constructed by the said The Woodland Avenue & West Side Street Railroad Company were constructed by it for its own benefit on account of the increased traffic and business that such extensions would naturally and necessarily bring to it, thereby increasing its income and profit.

For answer to paragraph seventeen of complainant's bill defendant admits that prior to May 13th, 1893, the Cleveland City Cable Railway Company owned, and operated lines of street railway upon Superior street by cable power, and lines upon St. Clair street operated by horse-power, and it denies each and every allegation con-

tained in paragraph seventeen not hereinbefore expressly admitted or denied.

Defendant further says that prior to March 22nd, 1889, the said The Woodland Avenue & West Side Street Railroad Company was exceedingly desirous of changing the street car service upon its lines from animal to electric motive power for the reason, among others, that the operation of such lines by electricity instead of animal power would be less expensive, and that the said company would make a large saving thereby and would be able to furnish service to the citizens of Cleveland at a much less expense thereby greatly increasing its profits; that the operation of said lines by electricity would be the means of providing a more rapid mode of transit, and enable said company to carry more people in a short space of time, and at a less expense, and thereby increase the patronage and profits of said company and in as much as the ordinance under which said company was operating its lines of railway permitted only the use of animal motive power, said company solicited from the council of said city the passage of the ordinance authorizing it to use electricity as a motive power, and thereupon in pursuance of such solicitation, and without any consideration therefor, the
55 city adopted said ordinance granting to said company the right and license to equip and operate said lines with electricity, and to erect the necessary poles, wires and equipment for the purpose of generating and using such electricity.

Said ordinance was passed March 22nd, 1889; that section eight of said ordinance is as follows:

"SEC. 8. Nothing contained in this ordinance shall in any wise release or relieve said company from compliance with all other ordinances relating to street railroads now in force, or which may hereafter be adopted by the city council, including all amendments hereto and thereto."

That there were, and are, no provisions whatever in said ordinance relating to fares to be charged by said company over any part of its lines of railway, the same being remitted to the provisions of ordinances then in force, and as respects its Woodland Avenue line, to the provisions of the ordinance of August 25th, 1879.

For answer to paragraph eighteen of complainant's bill defendant admits the formation of the complainant company in 1893 by the consolidation of the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company; admits the communication therein set forth from the said companies to the council of the city of Cleveland of date May 13th, 1893, and the adoption by said council of the resolution of May 15th, 1893, and denies each and every allegation contained in said paragraph eighteen not hereinbefore expressly admitted or denied.

And further answering defendant says, that on the first day of May, 1891, the legislature of the State of Ohio passed an act entitled "An act supplementary to section 2505 of the Revised Statutes, providing for the leasing, purchasing and consolidation of street

railroads," which among other things provided the method, manner, terms and conditions upon which street railroads could
56 be consolidated; and it further provided that whenever such consolidation is made as herein provided there shall be no increase of the existing rate of fare by reason of such consolidation, nor shall any fare be charged upon any of the separate routes so *consolidated*, in excess of the fare charged on such separate routes prior to the consolidation thereof. And provided that when any such consolidation is made as herein provided the fare charged for the continuous route or ride, over all such consolidated lines, *sh* shall not exceed the maximum fare charged over any one of said lines prior to such consolidation.

Defendant further answering avers and says, that the complainant company was organized as a consolidated company under and in pursuance of the act named above, and by reason of its organization became, and was and is, subject to all the conditions and limitations imposed by said act and other laws of the State of Ohio, and all amendments thereto; that the application of the complainant to the council of the city of Cleveland above set forth and the resolution adopted by the council of the city, herein referred to, neither enlarged or diminished their rights, privileges, duties, or liabilities of either the complainant company or the city of Cleveland. That the adoption of the said resolution was, and is, null and void. That the duty of the complainant company to give passengers one continuous ride over all such consolidated lines for one fare, not to exceed the maximum fare charged over any one of said lines prior to such consolidation, was fixed by the statutes of the State of Ohio, and became an obligation upon the complainant immediately upon such consolidation taking place. And the defendant further says, that the right of the city to reduce or diminish the rate or rates of fare over one or all of complainant's lines of railway was not effected or waived by the resolution hereinbefore referred to, or by any other resolution, order, ordinance or act of the council of said city.

57 And further answering said bill defendant admits that whatever grant- or ordinances the constituent companies, which formed complainant were operating their various lines of street railway under and at the time of the consolidation are still in force.

It denies that by said grants said constituent companies were authorized to charge a cash fare of five cents for each passenger carried, as averred in said bill, and says, that the defendant city had at that time, and always had the right to reduce or diminish the rate of fare on said constituent companies' lines, below five cents.

Defendant further answering says, that each and all of the various ordinances herein referred to relating to the Kinsman Street Railroad Company, the Woodland Avenue Railway Company, the West Side Street Railway Company, the St. Clair Street Railway Company, the Superior Street Railroad Company, the Cleveland City

Cable Railway Company, the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Railway Company, contain conditions and provisions to the effect that said companies should abide by, and perform, and be subject to, all and singular the conditions of all the general ordinances of the city of Cleveland relating to street railroads; and it was expressly understood and agreed in each and all of the said ordinances and grants that the said companies should abide by, be subject to, and perform all and singular the further and future orders and ordinances of the council of the city of Cleveland and in relation to their said railroads and the operation thereof; and that the complainant herein, and its predecessors, accepted each and all of their grants subject to the said provisions and conditions, that they further agreed to abide by and conform to, the further and future ordinances and orders of the council with reference to their said road- and grants.

58 And for answer to paragraph nineteen of the bill defendant denies as therein stated, that no one of the grants under which it is operating its various lines of street railway expires before the year 1908.

It denies that the complainant has the right to operate its lines during the period of these grants and to charge a cash fare of five cents for each passenger carried. And it alleges that under and by virtue of the provisions of the various ordinances under which the complainant is operating its respective lines, the council of the city of Cleveland has the right to require complainant to sell tickets for passage upon its cars, and particularly so with reference to the lines formerly operated by the Kinsman Street Railroad Company, with the extension thereto, and that the ordinance of October 17th, 1898, hereinafter referred to, only applies to the lines formerly operated by said The Kinsman Street Railroad Company with the extension thereto.

Further answering paragraph nineteen of the bill defendant admits, the passage by the council of the city of Cleveland of the ordinance by Mr. Hopkins, of the 17th day of October, 1898; and admits as stated in paragraph nineteen of said bill that in passing said ordinance the council of the city of Cleveland acted by delegated power from the State of Ohio; but defendant denies that said ordinance was in violation of the several contracts between complainant and its predecessors in interest, and the city of Cleveland, or that it was in violation of any contract or ordinance between said parties.

Defendant admits that said bill contains a correct copy of said ordinance; admits the signing, and publication thereof, and the intention of the mayor and other officials of the city of Cleveland to enforce compliance with the provisions of the same against complainant, and that the same went into effect on Tuesday, November 1st, 1898, as alleged in said bill.

For answer to paragraph twenty-one of complainant's bill defend-

ant admits, that the ordinance of October 17th, 1898, here-
59 inbefore referred to requires complainant to sell tickets good for passage at the rate of seven tickets for twenty-five cents, and to accept a cash fare of four cents; and defendant denies each and every allegation and averment in paragraph twenty-one not herein specifically admitted or denied.

Defendant for answer to paragraph twenty-two admits, that the practical effect and operation of said ordinance of October 17th, 1898 is to reduce the rate of fare to be received by complainant on the lines affected by said ordinance to the rate of four cents for a cash fare and about $3\frac{57}{100}$ cents for a ticket fare.

It admits that there is no coin of the denomination of four cents; and defendant denies each and every other allegation contained in said paragraph twenty-two of said bill. And defendant denies each and every allegation contained in paragraph twenty-three of complainant's bill. And for answer to paragraph twenty-four admits that under the provisions of some of the grants under which complainant is operating, it is required to pave and keep in repair certain portions of certain streets occupied by its tracks; but defendant denies, that during the last twenty years complainant invested in said street paving and in the performance thereof the sum of one million dollars; and denies each and every other allegation contained in paragraph twenty-four of complainant's bill not hereinbefore expressly admitted or denied.

And further answering defendant avers that during the last twenty years, complainant and its predecessors in interest have not expended more than $— in street paving; and that the paving so done was for the benefit of said companies being confined to the space occupied by and between, and adjacent to, the rails and tracks of their respective lines of railway. That the operation of such railways involved considerable wear and tear on the pavements and streets, and said companies were only required to do, and
60 only in fact did, such paving as was necessary owing to the added wear and tear thereof resulting from the operation of their lines of railway.

And for answer to the matters and things set forth in paragraph twenty-five of complainant's bill, defendant admits that under the law of the State of Ohio it is not competent for councils of municipal corporations to grant rights to street railroad companies for any period of time exceeding twenty-five years. And defendant denies each and every allegation contained in paragraph twenty-five of said bill not hereinbefore expressly admitted or denied.

And defendant further denies each and every allegation and statement contained in paragraph- twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two and thirty-three of complainant's bill.

Further answering the various matters and things set forth in complainant's bill defendant says that it is not informed save by said bill, as to the present market value of complainant's stock and

bonds; but it says that the aggregate amount of such capital stock and bonds at the market value alleged in complainant's bill is largely in excess of the actual money invested by complainant in its property, and that the same is largely in excess of the actual value of said complainant's property; that a large proportion of the capital stock of complainant company, to wit: more than two-thirds thereof, and a large proportion of the bonds issued by it are fictitious and represent no value whatever; that the same is not, and has not at any time been based, or issued, either upon the actual money investment of complainant, or upon the actual value of complainant's property.

And defendant avers that at all times during the issuance, sale and distribution of complainant's capital stock, and the sale of its said bonds, the council of the city of Cleveland had full and
61 complete right, and authority, to reduce and diminish the rate of fare to be charged by complainant over its respective lines of railway, and had the further right to compel said companies to sell tickets and accept the same for passage over its said lines; and it denies each and every allegation contained in said bill to the effect that the purchasers of said stock and bonds purchased and hold the same upon the faith of contracts, to the effect that the city would not and could not reduce said rate of fare.

This defendant further answering says that in the control and management of its business and property the complainant has been guilty of gross mismanagement and extravagance; that it has employed and maintained a large corps of officers at extravagant salaries, and has used a part of its income for political, and other purposes, inconsistent with its charter, and its rights under the ordinances of the city of Cleveland thereby greatly increasing its annual expenditures.

This defendant expressly denies that the fare or rate of fare fixed by said ordinance of October 17th, 1898, is unfair, unjust, unreasonable, or confiscatory; and alleges and avers that said fare or rate of fare, would, if put into effect by the complainant, prove to be sufficient to enable said complainant to pay all the expenses of operating and managing its lines of railway, pay all its fixed charges, and earn a fair and reasonable compensation upon all moneys invested in its street railway system.

And further answering defendant denies that any annual provision or fund should be set aside for any so-called depreciation in the value of the property of the complainant company, and alleges that any and all depreciation of the property of complainant is fully met and provided for by way of repairs and replacements from time to time, and from year to year, and is included in the annual expenses of complainant; and that complainant's property and equipment is fully kept intact, and its standard of efficiency and value
62 maintained by the repairs and replacements which take place necessarily from the operation of its lines of railway; the defendant denies that a sinking fund should be created and set

aside out of the earnings of said company to indemnify the stockholders of said company against a loss or expiration of its franchises; and avers that on the contrary, inasmuch as the stockholders of said company and of the several street railway companies which, by consolidation, formed the complainant company well knew, or ought to have known, at the time of the purchase of their stock that the duration of the ordinances or licenses under which said companies operated their street railways in the city of Cleveland was limited, and had or would cease or terminate at a certain specified time and made their investments accordingly there is no reason, justice or equity which would require the making and setting aside of such provision or fund.

And as to the allegations of that part of complainant's bill referring to the future growth of the city of Cleveland defendant says, that there is no duty, or obligation, upon the part of the complianant company to construct, and operate extensions of its lines so as to keep pace with such growth; nor is there any duty or obligation on the part of the city to permit complainant company to so construct and operate such extensions.

And further answering defendant says, that for the last forty years during which complainant and its predecessors in interest have operated their lines of street railway in the city of Cleveland, said city has increased in population from forty-three thousand in 1859, to nearly four hundred thousand at the present time. That said growth has been gradual and continuous, and that during all that time the complainant company and its predecessors in interest have solicited from the council of the city the privilege of
63 extending its lines from time to time so as to secure the added patronage and increased business attending such growth of population, for the purpose, and with the result, of increasing its annual profits from the operation of its railway systems.

That the territory contiguous and adjacent to the complainant's lines and particularly the former line of railway of the Kinsman Street Railroad Company, to wit, the Woodland Avenue line, has year by year, become more dens-ly populated; that the increase in the territorial limits of said city during said period of time has not kept pace with the city's growth in population; that the increase in street railway traffic and patronage, resulting from such increase in population has exceeded the relative increase in the number of lines or extensions of lines of railway made necessary by such increased traffic and business; and this applies particularly to the Woodland Avenue line for the reason that the population of that portion of the city traversed by said line has, within said period of time, increased in density of population in a much larger and greater proportion than it has in extent of territory, so that in order to accommodate such increased traffic and business it has not been necessary for the complainant or its predecessors in interest, to construct, nor have they constructed new lines of railway or extensions

of lines in proportion to the extent of its increased traffic and business.

That during all this period, the city, through it council, has been liberal in its grants to said company, and its predecessors in interest, having made such grants wholly without cost or compensation, and under circumstances enabling said railway companies to secure the same without competing with other parties as to the rates of fare; and furthermore, the grants to the Kinsman Street Railroad Company and the Woodland Avenue Railway Company, particu-
64 larly, were granted at such times, and over such streets as to enable the said companies and their successors in interest to enjoy a virtual monopoly of the street railway business in that portion of the city of Cleveland traversed by its lines. That having thus liberally dealt with and favored the said complainant, and its predecessors in interest, and particularly the Kinsman Street Railroad Company, and its successors in interest, for the period of forty years, defendant says that in justice, equity and good conscience the council of the city of Cleveland on the 17th day of October, 1898, exercised the right reserved to it, to reduce the rate of fare upon that portion of complainant's lines to which the ordinance of said date applies.

And further answering defendant says, that the practical operation of putting into effect the ordinance of October 17th, 1898, will be to increase the business and patronage of the lines affected by said ordinance; that the reduced rate of fare therein provided for will be an inducement for many more persons to patronize the street cars on said lines, than have heretofore patronized the same; that the additional patronage and travel resulting thereby will more than make up the loss suffered by complainants in the reduction in its rate of fare; and this without at the same time increasing to any material extent the expenses of operating said lines.

Defendant further answering says, that the cost of constructing, equipping and operating electric street railways in the city of Cleveland and elsewhere, at the present time, is much less than it was when the same was adopted by complainant's predecessors in interest.

And further answering alleges that from the time the Woodland Avenue & West Side Railroad Company changed its system from horse power to electric motive power until the present time, there has been a gradual and substantial decrease in the cost of all street railway equipment, including rails, ties, poles, wires, motors,
65 car-bodies and other machinery, equipment and appliances used in operating electric railways; and with such decreased cost has also come a corresponding improvement in the durability and adaptability of such appliances and equipment.

That for these reasons electric street railways can be constructed, maintained and operated, at the present time, at a greatly reduced expense and cost as compared with conditions heretofore existing.

And further answering defendant avers, that the complainant

The Cleveland City Railroad Company is at present operating sixty-two miles of street railway in the city of Cleveland; that nearly all the same is a double track road and, excepting its Superior Street and Payne Avenue lines, is wholly operated by electricity as a motive power. That the ordinance of October 17th, 1898, hereinbefore referred to does not affect all of complainant's lines of railway, but as stated in said ordinance, it applies only to such lines of railway as are operated under and in pursuance of the renewal grant therein recited. That the lines to which it applies are what is known as the Woodland Avenue line with its Kinsman Street branch; that the total mileage of the said line so affected by said ordinance is thirteen miles, leaving forty-nine miles of complainant's lines of railway to which said ordinance does not apply.

Defendant avers, that neither the gross receipts, the net receipts, nor the expenses of operating any of complainant's lines of railway will be affected by the operation of said ordinance of October 17th, 1898, except that portion thereof known as the Woodland Avenue line with its Kinsman Street branch above referred to; and that said lines constitute only twenty-one per cent. of complainant's total or aggregate lines of railway in the city of Cleveland, leaving 79 per cent. of its said lines of railway wholly unaffected by said ordinance as to gross receipts, expenses and net receipts.

66 Defendant avers that the traffic and business on each of complainant's various lines of railway and the gross receipts, the expenses and the net receipts are substantially in proportion to the number of miles of each particular line of railway; that is to say, the income from, and the expense of operating, each separate line is substantially the same, for the same or equal number of miles of track.

Defendant says, that the alleged reduction in complainant's net receipts of — per cent. resulting from the operation of said ordinance contained in complainant's bill is not only fictitious and erroneous, but is based upon the erroneous assumption that the reduction of fare provided for in said ordinance applies to each and every one of complainant's lines of railway; that is to say; it is calculated on the basis of a four cent cash fare, and a 3 57 / 100 cent ticket fare, for all of complainant's lines of railway; whereas in truth and in fact the reduction provided for in said ordinance applies to twenty-one per cent. of complainant's lines of railway and no more.

Therefore defendant says, that the operation and effect of said ordinance, and the operation of said Woodland Avenue line with its Kinsman Street branch at a four cent cash fare and a 3 57 / 100 cent ticket fare, as provided in said ordinance, will enable complainant to pay all its operating expenses fixed charges, and a fair and reasonable profit on the money actually invested in its property and on the actual value of its property, leaving a large surplus in addition thereto.

Defendant further answering says that complainant's receipts and income from carrying passengers is not its only source of income,

revenue and profit. That in addition to its income for carrying passengers said company has derived, and is deriving, an income and revenue from carrying United States mail, express matter and other packages, goods and merchandise, and an income and revenue from furnishing electric light, heat and power to various cit-
67 izens, and for various purposes, in the city of Cleveland, and from the letting of advertising space in and upon its street cars, and from certain agreements and beneficial arrangements entered into between complainant and various electric roads operating suburban electric railways without the city of Cleveland, and from various other sources.

Defendant says that it is not informed as to the exact amount of the income and profit received by complainant from the several sources of revenue, but it avers that the income from such sources is not less than $100,000 per annum; and it further avers and contends that the reasonable value to complainant of exercising the privileges from which such revenue and profit are derived is not less than $100,000 per annum.

Defendant further says, that during the years which said company may in the future, under present ordinances, operate its lines of railway in such city that it is only fair to presume said city will continue to grow as it has for many years past, and that such continued growth will greatly add to the business and profits of said complainant company.

Further answering defendant denies, that before complainant could at law demonstrate the invalidity of said ordinance by adjudication, a multiplicity of suits would ensue, and great inconvenience, and conflict, and trouble would arise, as alleged in paragraph thirty-four of said bill; admits that said ordinance by its terms went into effect November 1st, 1898.

Defendant further answering the matters and things contained in paragraph thirty-four, or so much thereof as it is advised is material says, that it does not know and is not informed save by said bill, as to the matters and things therein contained, except that this defendant avers that it was and is the intention of the city of Cleveland to carry into effect and enforce the provisions of said ordinance, according to the true intent and meaning thereof, unless restrained by the order of some court of competent jurisdiction in the
68 premises, and it therefore denies each and every allegation therein, not herein admitted and demands proof of so much thereof as it shall be advised is material.

And this defendant avers and contends that this court has no jurisdiction of this cause, among other things for this, that the complainant has a complete and adequate remedy at law; that the subject matter of this cause does not properly come within the jurisdiction of a court of equity, and is one appropriately and properly within the jurisdiction of a court of law.

That the matter in dispute does not exceed, exclusive of interest and costs, or either, the sum of five thousand dollars, and that this

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cause does not arise under the laws or Constitution of the United States, and that said cause does not present, and is not a controversy between citizens of different States, but is a controversy between citizens of the same State, viz.; between the said complainant, The Cleveland City Railroad Company, and said defendant The City of Cleveland, who are both citizens of the State of Ohio.

And this defendant avers that any other matter, cause or thing in said bill contained material or necessary to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided and denied, is not true to the knowledge and belief of this defendant; and defendant denies each and every allegation not hereinbefore specifically admitted or denied; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall order and direct, and this defendant denies that the complainant is entitled to the relief or any part thereof, in said bill demanded, and prays to be hence dismissed with its costs.

MINER G. NORTON,
FORD, BOYD & CROWL,
Solicitors and Attorneys for the Defendant.

69 STATE OF OHIO, *Cuyahoga County,* } ss:

W. H. Boyd, being first duly sworn says, that he is assistant corporation counsel of the defendant, The City of Cleveland, a municipal corporation, and that the facts and averments in the foregoing answer are true as he verily believes, and that as to that portion of the averments of said answere stated on information, that he believes the same to be true.

W. H. BOYD.

Subscribed in my presence and sworn to before me by the said W. H. Boyd, this 10th day of December, 1898.

[SEAL.] CHAS. G. F. VON W. EMERY,
Notary Public.

Tax fee 40 cents.

70 Endorsements on answer: No. 5839. U. S. circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company, complainant, *vs.* The City of Cleveland, defendant. Answer of the City of Cleveland. Filed Dec. 10, 1898, Irvin Belford, clerk U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd and Crowl, attorneys for defendant.

71 *Affidavit of William G. Beck.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, vs. THE CITY OF CLEVELAND, Defendant. } No. 5839. Affidavit of William G. Beck.

William G. Beck, being first duly sworn, deposes and says: That he is a member of the annual city board of equalization of the city of Cleveland and is secretary of said board, having served in such capacity since the 12th day of July, 1898; that in addition thereto he has been continuously employed as a clerk in the office of the county auditor of Cuyahoga county, Ohio, for seveen years last past; that in his said two official capacities he has become thoroughly familiar with the records of the office of the county auditor of Cuyahoga county, as well as the records kept by said board of equalization, and particularly familiar with that part of the records of said offices pertaining to the returns made by persons and corporations in said city and county of the amounts and value of their personal property.

Affiant says that the exhibits hereto attached and marked respectively "Exhibits "A to "Q" inclusive are true and accurate copies of the affidavits and statements made by the officers by which they each severally purport to have been made, of the Woodland Avenue & West Side Street Railroad Company, the Cleveland City Cable Railway Company and the Superior Street Railroad Company, for the years from 1887 to 1898, inclusive, and that said exhibits are true copies of all the affidavits, showing the amounts, nature and value of the personal property of said companies which are on file
72 with the auditor of said county; that he has compared each one of the said exhibits with the original on file in said office and knows the same, and each one of the same to be a correct and accurate copy of the original affidavits.

Affiant further says that the last return of personal property made by the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company, were for the year 1892; that the first return of personal property made by the Cleveland City Railway Company was for the year 1893, and that the return made by said company has been continued annually from 1893 until 1898, inclusive.

Affiant says that the companies which were consolidated in 1893, and formed the Cleveland City Railway Company were the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company; that the total and aggregate

value of the personal property in the city of Cleveland, including tracks, equipment, rolling-stock, money in bank, and credits of the said two companies as shown by their affidavits on file in the office of the said county auditor for the years 1887, 1888, 1889, 1890, 1891 and 1892, is as follows:

For the year	1887	$166,015
" " "	1888	178,769
" " "	1889	172.255
" " "	1890	101,995
" " "	1891	137,800
" " "	1892	155,850

The years 1887, 1888 and 1889, include the separate returns of the Superior Street and St. Clair Street lines.

Affiant further says that the total aggregate value of all the personal property of the Cleveland City Railway Company in the city of Cleveland, including tracks, equipment, rolling-stock, money in bank, and credits, as shown by the affidavits on file in the office of said county auditor for the years 1893, 1894, 1895, 1896, 1897 and 1898, is as follows:

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For the year	1893	$313,310
" " "	1894	303,375
" " "	1895	400,815
" " "	1896	382,645
" " "	1897	455,260
" " "	1898	455,260

Affiant further says that the exhibit hereto attached and marked "Exhibit "R," is a correct and accurate detailed statement of the tax valuation of all the property, both real and personal, of said The Cleveland City Railway Company, situated both in the city of Cleveland and outside of the city within the county of Cuyahoga, as shown by the records of the office of the county auditor of Cuyahoga county, and of the boards of equalization of said city and county; that said detailed statement was prepared by affiant from said records, was carefully compared by him with said records; and that the same is correct.

WILLIAM G. BECK.

Sworn to before me by the said William G. Beck, and by him subscribed in my presence, this 16th day of December, 1898.

CHAS. G. F. VON W. EMERY,
[SEAL.] *Notary Public.*

Tax fees forty cents.

SCHEDULE C.

CITY, VILLAGE, HAMLET, TOWNSHIP and SPECIAL SCHOOL DISTRICT.	No. of Miles of Double track Steam Railway.		No. of Miles of Double track Electric Railway.		No. of Miles of Single track Electric Railway.		No. of Miles of Double track Electric Railway.		No. of Miles of Single track Electric Railway.		Value of track, cars and all other property of every kind not otherwise specified, including all poles, wires, conduits, buildings, machinery, &c.	TOTAL.
	Miles.	100ths.	Miles.	100ths.	Miles.	100ths.	Miles.	100ths.	Miles.	100ths.	DOLLARS.	DOLLARS.
Jno A Forward												1K 210
Cleveland	9	15									5500	50825
"					4	32					2300	9936
"			16	33							4600	75718
J Glenville									1	02	2300	2346
Lakewood			2	95							4600	13570
Poles & Wires												
Cleveland					4	32					1130	4.881.60
"			16	33							1760	26905.80
Lakewood			2	95							1750	5762.50

REPORT

OF

TAXABLE PROPERTY

OF THE

Cleveland City

Street Railway Company.

For 1894

CUYAHOGA COUNTY.

Received at the Auditor's Office

.....189....

STREET RAILWAY COMPANIES' RETURN FOR TAXATION.

Statement *of all Taxable Property of The* Cleveland City 85
Railway Company, owned by said Company on the day preceding the second Monday in April, 189..., in Cuyahoga County, Ohio.

	No.	VALUE OF EACH.	TOTAL VALUE.
SCHEDULE A.			
Electric Motors, 1st class			
" 2nd "			
" 3rd "			
Grip Cars, 1st class,			
" 2nd "			
Trail or Horse Cars, 1st class,			
" " 2nd "			
" " 3rd "			
Freight Cars,			
Snow Plows,			
Sweepers,			
Sprinklers,			
Wagons,			
Buggies,			
Horses,			
Mules,			
Harnesses,			
All other personal property included in rolling stock and not included in any above items,			
SCHEDULE B.			
Machinery (not including that listed with real estate,)			
Tools and implements,			
Office furniture, fixtures, safes, &c.,			
Lumber, stone, wood and coal on hand,			
Value of all hay and grain on hand,			
Value of all iron and steel rails on hand and not laid,			
Value of all iron and wooden poles on hand and not set,			
Value of all iron and wooden ties and stringers on hand not laid,			
Value of all copper and iron wire and cable on hand not in use,			
Value of supplies of all kinds on hand and not included in above items,			
All other personal property not included in Schedules A. B. or C.			
Amount of money on deposit in banks on day preceding 2d Monday in April, 189			
Amount of money in hand on day preceding 2d Monday in April, 189			
Value of all credits and amounts due to company, $			
Deduct all amounts owing by company from last item, $			
Total credits less debts, $			

85

Exhibit "L"



SCHEDULE C.

CITY, VILLAGE, HAMLET, TOWNSHIP and SPECIAL SCHOOL DISTRICT.	No. of Miles of Double track Cable Railway.		No. of Miles of Double track Electric Railway.		No. of Miles of Single track Electric Railway.		No. of Miles of Double track Horse Railway.		No. of Miles of Single track Horse Railway.		Value of track per mile including all rails, ties, switches, cable, poles, wires, conduits, switches, turnouts, &c.	TOTAL.
	Miles	100ths	Miles	100ths	Miles	100ths	Miles	100ths	Miles	100ths	DOLLARS.	DOLLARS.
Glenville			1	89							9000	17010
						49					4500	2205
Euclid			2	81							9000	25290
Cleveland Tp				06							9000	540

REPORT

OF

TAXABLE PROPERTY

OF THE

Cleveland City

Street Railway Company.

For 1895

CUYAHOGA COUNTY.

County Auditor's Addition

Nos. 8108-9-10

Received at the Auditor's Office

.....189....

STREET RAILWAY COMPANIES RETURN FOR TAXATION.

Statement *of all Taxable Property of The* Cleveland City 86

Railway Company, owned by said Company on the day preceding the second Monday in April, 1895, in Cuyahoga County, Ohio.

	No.	VALUE OF EACH.	TOTAL VALUE.
SCHEDULE A.			
Electric Motors, 1st class	26	600	15,600
" 2nd "	40	600	24,000
" 3rd "	11	600	6,600
Grip Cars, 1st class,	40	400	16,000
" 2nd "	7	250	1750
Trail or Horse Cars, 1st class,	42	300	12600
" " 2nd "	159	250	39750
" " 3rd "	30	50	1500
Freight Cars,			
Snow Plows,	1		525
Sweepers,	6	300	1800
Sprinklers,	4	100	400
Wagons,	6	50	300
Buggies,	2	40	80
Horses,	45	50	2250
Mules,			
Harnesses,			
All other personal property included in rolling stock and not included in any above items,			
SCHEDULE B.			
Machinery (not including that listed with real estate,)			1200
Tools and implements,			590
Office furniture, fixtures, safes, &c.,			600
Lumber, stone, wood and coal on hand,			400
Value of all hay and grain on hand,			75
Value of all iron and steel rails on hand and not laid,			
Value of all iron and wooden poles on hand and not set,			
Value of all iron and wooden ties and stringers on hand not laid,			
Value of all copper and iron wire and cable on hand not in use,			
Value of supplies of all kinds on hand and not included in above items,			
All other personal property not included in Schedules A. B. or C.			
Amount of money on deposit in banks on day preceding 2d Monday in April, 1895,			None.
Amount of money in hand on day preceding 2d Monday in April, 1895,			4
86 Value of all credits and amounts due to company, $			
Deduct all amounts owing by company from last item. $			
Total credits less debts. $ Forward			126020

Exhibit "M"

SCHEDULE C.

CITY, VILLAGE, HAMLET, TOWNSHIP and SPECIAL SCHOOL DISTRICT.	No. of Miles of Double track Cable Railway. Miles	100ths	No. of Miles of Double track Electric Railway. Miles	100ths	No. of Miles of Single track Electric Railway. Miles	100ths	No. of Miles of Double track Horse Railway. Miles	100ths	No. of Miles of Single track Horse Railway. Miles	100ths	Value of track per mile including all rails, ties, switches, cable, poles, wires, conduits, conductors, turnouts, &c. DOLLARS.	TOTAL. DOLLARS.
Ind												176,020
Cleveland	9	15									10,600	96,990
do			18	20							4600	83,950
do					7	15					2300	16,445
Glenville									1	02	2300	2346
Collinwood											4600	13570
Poles & Wire												
Cleveland					4	32					1380	5961,60
do			18	25								5070
Collinwood			2	95								5762,50
Grand Total,												440,815,10

The State of Ohio, } ss.
CUYAHOGA COUNTY,

John Thurland N. Asst Secy of
The Cleveland City Railway Co.,
do solemnly swear that the foregoing is a full and complete statement of all taxable property,
exclusive of real estate, owned by The Cleveland City Railway
Company on the day preceding the Second Monday in April, 1895.

John Thurland N.
Asst Secy

Sworn to before me and subscribed in my presence this 25 day of April 1895

A C Wright
Notary Public

Dem 1

86½

REPORT

OF

TAXABLE PROPERTY

OF THE

Cleveland City

Street Railway Company,

For 1895

CUYAHOGA COUNTY.

Received at the Auditor's Office

.....189....

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EXHIBIT "N."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Cleveland City Railroad Company owned by said company on the day preceding the second Monday in April, 189–, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	26	600	15,600
" " 2nd "	40	600	24,000
" " 3rd "	11	600	6,600
Grip cars 1st class	40	400	16,000
" " 2nd "	7	250	1,750
Rail or horse cars 1st class	42	300	12,600
" " " 2nd "	159	250	39,750
" " " 3rd "	30	50	1,500
Snow plows	1	.....	525
Sweepers	6	300	1,800
Sprinklers	4	100	400
Wagons	6	50	300
Buggies	2	40	80
Horses	25	50	1,250

SCHEDULE B.

Machinery (not included that listed with real estate)	1,200
Tools and implements	590
Office furniture, fixtures, safes, &c	600
Lumber, stone, wood and coal on hand	400
Value of all hay and grain on hand	75
Amount of money deposit in banks on day preceding 2nd Monday in April, 1896	None.
Amount of money in hand on day preceding 2nd Monday in April, 1896	"
Am't for'd	125,020

88 SCHEDULE C.

City, village, hamlet, township, and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable poles, wires, conduits, switches, turnouts, etc.	
	M. 100ths.	*M. 100ths.*	*M. 100ths.*	*M. 100ths.*	*Dollars.*	
Am't for'd						125,020
Cleveland	9.15				10,600	96,990
"		18.25			4,600	83,950
"			7.15		2,300	16,445
Glenville				1.02	2,300	2,346
Lakewood		2.95			4,600	13,570
	Poles &	wires.				
Cleveland		18.25			2,760	50,370
"			7.15		1,330	9,867
Lakewood		2.95			1,750	5,162.50
County	$211,078					
City	382,642					
Grand total						$403,720.50

THE STATE OF OHIO, } *ss:*
Cuyahoga County, }

John Ehrhardt, ass't sec'y of the Cleveland City Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland City Railroad Company on the date preceding the second Monday in April, 1896.

JOHN EHRHARDT, *Ass't Sec'y.*

Sworn to before me and subscribed in my presence this 15th day of Sept. 1896.

R. C. WRIGHT,
Notary Public.

[SEAL.]

89 Endorsements: Report of taxable property of the Cleveland City Railway Company for 1896, Cuyahoga county. Received at the auditor's office Sept. 15, 1896, C. C. Schallentrager, Co. aud'r.

90

EXHIBIT "O."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Cleveland City Railroad Company owned by said company on the day preceding the second Monday in April, 1897, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	26	900	23,400
" " 2nd "	40	900	36,000
" " 3rd "	11	900	9,900
Grip cars 1st class	40	400	16,000
" " 2nd "	7	250	1,750
Trail or horse cars 1st class	42	300	12,600
" " " " 2nd "	159	250	39,750
" " " " 3rd "	30	50	1,500
Snow plows	1		525
Sweepers	6	300	1,800
Sprinklers	4	100	400
Wagons	6	50	300
Buggies	2	40	80
Horses	15	50	750

SCHEDULE B.

Machinery (not included that listed with real estate)	1,200
Tools and implements	590
Office furniture, fixtures, safes, &c.	600
Lumber, stone, wood and coal on hand	400
Value of all hay and grain on hand	75
Amount of money deposit in banks on day preceding 2nd Monday in April, 1897	None.
Amount of money on hand on day preceding 2nd Monday in April, 1897	None.
Forward	147,620

91

SCHEDULE C.

City, village, hamlet, township, and special school districts.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable poles, wires, conduits, switches, turnouts, etc.	
	M. 100ths.	*M. 100ths.*	*M. 100ths.*	*M. 100ths.*	*Dollars.*	
Forward						147,620
City	9.15				12,000	109,800
"		18.80			6,000	112,800
"			6.75		3,000	20,250
	Poles and	wires.				
City		19.07			3,000	57,210
			3.79		2,000	7,580
Grand total						455,260

THE STATE OF OHIO, } ss:
Cuyahoga County, }

John Ehrhardt, ass't sec'y, of the Cleveland City Railway Company do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland City Railway Company on the day preceding the second Monday in April, 189–.

JOHN EHRHARDT, *Ass't Sec'y.*

Sworn to before me and subscribed in my presence this 3rd day of May, 1897.

R. C. WRIGHT,
Notary Public.

[SEAL.]

92 Endorsements: Report of taxable property of the Clev'd City Street Railway Company. For 1897. Cuyahoga county. O. K. for 1897. Received at the auditor's office May 3, 1897.

93 EXHIBIT "P."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the Cleveland City Railroad Company owned by said company on the day preceding the second Monday in April, 1898, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	26	900	23,400
" " 2nd "	40	900	36,000
" " 3rd "	11	900	9,900
Grip cars 1st class	40	400	16,000
" " 2nd "	7	250	1,750
Trail or horse cars 1st class	42	300	12,600
" " " " 2nd "	159	250	39,750
" " " " 3rd "	30	50	1,500
Snow plows	1		525
Sweepers	6	300	1,800
Sprinklers	4	100	400
Wagons	6	50	300
Buggies	2	40	80
Horses	15	50	750

SCHEDULE B.

Machinery (not included that listed with real estate)	1,200
Tools and implements	590
Office furniture, fixtures, safes, &c	600
Lumber, stone, wood and coal on hand	400
Value of all hay and grain on hand	75
For'd	147,620

94 SCHEDULE C.

City, village, hamlet, township, and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable poles, wires, conduits, switches, turnouts, etc.	
	M. 100ths.	*M. 100ths.*	*M. 100ths.*	*M. 100ths.*	*Dollars.*	
For'd						147,620
City	9.15				12,000	109,800
"		18.80			6,000	112,800
"			6.75		3,000	20,250
	Poles and wires.					
City		19.07			3,000	57,210
"			3.79		2,000	7,580
Grand total						455,260

THE STATE OF OHIO, *Cuyahoga County,* } *ss:*

John Ehrhardt, ass't sec'y of the Cleveland City Railway Company, do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland City Railway Company on the day preceding the second Monday in April, 1898.

JOHN EHRHARDT, *Ass't Sec'y.*

Sworn to before me and subscribed in my presence this 22nd day of June, 1898.

R. C. WRIGHT,
Notary Public.

[SEAL.]

95 Endorsements: Report of taxable property of the Cleveland City Railway Company for 1898. Cuyahoga county. Received at the auditor's office, June 22, 1898. Referred to B. of E. & A.

96 EXHIBIT "Q."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the Cleveland City Railroad Company owned by said company on the day preceding the second Monday in April, 1898, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.

SCHEDULE B.

97 SCHEDULE C.

City, village, hamlet, township, and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of single track horse railroad.	Value of track per mile including all rails, ties, stringers, cable poles, wires, conduits, switches, turnouts, etc.	
	M. 100ths.	*M. 100ths.*	*M. 100ths.*	*M. 100ths.*	*Dollars.*	
Glenville		1.74			4,600	8,004
"				1.02	2,300	2,346
Lakewood		2.95			4,600	13,570
E. C. Township		.06			4,600	276
	Poles and	wires.				
Glenville		1.74			1,750	3,045
Lakewood		2.95			1,750	5,162.50
E. C. Township		.06			1,750	105
Grand total						32,508.50

THE STATE OF OHIO, *Cuyahoga County,* } *ss:*

John Ehrhardt, ass't sec'y of the Cleveland City Railroad Company, do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland City Railroad Company on the day preceding the second Monday in April, 189–.

JOHN EHRHARDT, *Ass't Sec.*

Sworn to before me and subscribed in my presence this 22nd day of June, 1898.

[SEAL.]

R. C. WRIGHT,
Notary Public.

98 Endorsements: 1898 County report of taxable property of the Cleveland City Street Railway Company. For 1898. Cuyahoga county.

EXHIBIT "R."

	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Woodland Ave. and West Side:												
Real estate (city)	329.20	329.20	329.20	329.20	494.70	492.40	1158.60					
Real estate (county)	57.40	57.40	57.40	57.40	37.80	37.80	37.80					
Personal (city)	998.45	977.55	884.80	886.30	886.30	1099.20						
Personal (county)	97.90	98.00	123.40	137.40	170.20	152.70						
Superior and St. Clair:												
Real estate (city)	150.75	122.45	122 45									
Personal (city St. Clair)	228.20	244.14	249.75									
Personal (city Sup.)	433.50	566.00	588.00									
" (county)	26.00	26.00	26.00									
Cleveland City Cable Co.:												
Real estate, city				133.65	491.70	459.30	410.50					
Personal, county St. Clair included				26.00	56.00	50.00						
" city				876.75	1411.00	1865.00						
Cleveland City R. R. Co.:								2226.90	2037.80	2178.50	2108.60	2027.80
Real estate (city)							2722.60	3033.75	4008.15	3826.45	4552.60	4552.60
Personal (city)								39.30	45.30	48.50	48.50	48.50
Real estate (county)							248.60	210.70	210.80	210.80	325.10	325.08
Personal (county)												

100 Endorsements on affidavit of Wm. G. Beck: No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of Wm. G. Beck. Filed Dec. 17, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd and Crowl, attorneys for the City of Cleveland.

101 *Affidavit of Alfred Strehler.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. Affidavit of Alfred Strehler.

Alfred Strehler being first duly sworn, deposes and says: That he is a civil engineer by profession and occupation, having been actively engaged in civil engineering for the past twenty-seven years, and that for the past eleven years he has been continuously employed in the engineering department of the city of Cleveland, having special charge of the location, plats, surveys and measurements of the streets, avenues, alleys and public grounds of said city, and that beginning with the fifth day of November, 1898, and ending with the tenth day of December, 1898, he made measurements and computations of the aggregate lineal measurements of all the lines of street railway within the limits of the city of Cleveland owned and operated by The Cleveland City Railway Company, complainant herein.

Affiant further says that the Cleveland City Railway Company owns and operates at the present time 62.1 miles of street railway in the city of Cleveland (single track measurement); that substantially all of the same is operated as double track railway; that the aggregate lineal measurement of that portion of said company's lines to which the ordinance of October 17th 1898, applies, viz: the Woodland Avenue line with its Kinsman Street branch, is thirteen miles, leaving forty-nine miles of said company's lines of railway to which said ordinance does not apply; in other
102 words, the total aggregate mileage of the Woodland Avenue line with its Kinsman Street branch constitutes about twenty per cent. of the Cleveland City Railway Company's total or aggregate lines of railway in the city of Cleveland.

Affiant further says that he has attached to this, his affidavit, a schedule marked "Exhibit A," showing the various lines of railway operated by the Cleveland City Railway Company, the length of each in feet and miles stated separately, together with the distances between certain points thereon shown on certain streets where more

than one line of railway is operated over one and the same track, and which schedule affiant says is correct to the best of his knowledge and belief.

ALFRED STREHLER.

Sworn to by the said Alfred Strehler before me and by him subscribed in my presence this 14th day of December, 1898.

CHAS. G. F. VON W. EMERY,
Notary Public.

[SEAL.]

Tax fee forty cents.

Track Mileage.

Line.	From—	To—	Feet single track.	Miles single track.
St. Clair street	Cen. Water & C. St. Clair	East line of Bratenhal road, including line along Erie from Superior to St. Clair.	48790	9.240
Superior street	C. Water St. & C. Front St	W. line of Doan St. (cable)	54062	10.239
Payne avenue	C. Superior & C. Payne	Center of Hough Ave. (cable)	41740	7.905
Woodland avenue	C. Public Square and Superior	Woodland Hills avenue	44994	8.521
Kinsman street	C. Willson and C. Kinsman	Easterly city limits	23812	4.509
Lorain street	C. Detroit and Pearl St	Car barn corn. Wellington & Lorain	34890	6.608
Fulton street	E. line of Circle	Lorain street	3260	.617
West Madison Ave	C. Detroit & C. Kentucky	Highland Ave 32290		
Franklin Ave. branch	C. Bridge St. & C. Gordon Ave	C. Pearl St 8152		
			40442	7.659
Detroit street	C. Pearl St. and Detroit St	C. Highland avenue	35668	6.755
			327658	62.053
Total mileage of single track of Cleveland City Railway Company, excepting distances across Superior Street viaduct and the down-town loops				62.1 miles.

Distances Along Streets Occupied by More Than One Line.

From center of public square and C. Superior street along Superior, to C. of Water and Superior	1693
From center of Water and Superior along Superior St. viaduct to C. Pearl and Detroit Sts.	3381
From C. Detroit St. and C. Pearl St. along Pearl to C. of Pearl and Franklin	1255
From center of Pearl and Franklin along Pearl to C. of Pearl St. and Lorain St	1626
From center of Pearl and Detroit Sts. along Detroit to C. of Kentucky and Detroit	2355
From center of Pearl and Franklin along Franklin St. to east line of circle	506

December 10, 1898.

ALFRED STREHLER, *Ass't Engineer.*

104 Endorsements on affidavit of Alfred Strehler: No. 5839. U. S. circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company, complainant, *vs.* The City of Cleveland, defendant. Affidavit of Alfred Strehler. Filed Dec. 17, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd and Crowl, attorneys for the City of Cleveland.

Order Continuing Order to Show Cause.

October Term, A. D. 1898, to-wit, December 17, 1898.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO. *vs.* THE CITY OF CLEVELAND. } No. 5839. Equity.

The hearing on the return of the rule to show cause why a temporary injunction should not issue as prayed for in the bill of complaint is postponed to Thursday, December 22nd, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard. And the injunction heretofore granted is continued in full force and effect as hereinbefore ordered.

105 *Affidavit of John W. Taylor.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. Affidavit of John W. Taylor.

John W. Taylor being first duly sworn deposes and says, that he is a broker and dealer in real estate in and about the city of Cleveland, Ohio; that he has been engaged in such business in said city for the period of 14 years; that he is familiar with real estate values in, throughout and about said city, and that between the 17th day of December, 1898, and the 22nd day of December, 1898, in company with one Wm. G. Taylor and one Chas E. Pegler, he made a complete and thorough examination and view of the real estate of the Cleveland City Railway Company located in the city of Cleveland, for the purpose of ascertaining and estimating the fair and reasonable value thereof; that the number of pieces and parcels of real estate so examined and estimated by him are fully described in the

affidavit of Arthur Odell, filed in this case, to which reference is hereby made for a more specific description thereof.

Affiant further says, that in his opinion the fair and reasonable value of the real estate of the Cleveland City Railway Company in the city of Cleveland, as shown and described in the said affidavit filed by the said Arthur Odell including all the real estate therein described from parcels No. 1 to 16 inclusive is $139,375.00.

Affiant says that said valuation does not include the value
106 of the buildings and improvements on said real estate.

JOHN W. TAYLOR.

Sworn to by the said John W. Taylor and by him subscribed in my presence, this 22nd day of December, A. D. 1898.

[SEAL.] OSCAR J. HORN,
Notary Public.

Tax fees 40 cents.

Endorsements on affidavit of John W. Taylor: 5839. U. S. circuit court. The Cleveland City Railway Company, *vs.* The City of Cleveland. Affidavit of John W. Taylor on behalf of defendant. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, attorneys for def't.

Affidavit of Arthur Odell.

Descriptions of All Real Estate Owned by the "Cleveland City Railway Company" to Dec. 5, 1898.

20 parcels.

Parcel number 1.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, commencing at a point at the intersection of Superior
107 street and Giddings avenue; thence running south along the center of Giddings avenue 433 feet and 7 inches to a point; thence running west on the northerly line of Whitney avenue 99 feet and 2 inches to a point; thence running north on a line parallel with the central line of Giddings avenue 466 feet and 5 inches to a point in the center of Superior street; thence running east along the center of Superior street 97 feet and 4 inches to the place of beginning, containing 1 acre of land, being a part of original lot No. 344.

The above described land is 1 acre of land off the east side of 5 acres of land deeded to Henry Keller by Althea F. Whitney and George W. Whitney by warranty deed dated October 22, 1869, and recorded in volume 169, page 558 Cuyahoga county records of deeds.

Parcel number 2.

Situated in the city of Cleveland, county and State aforesaid, and known as part of original lot number 344 of East Cleveland township, and described as follows:—Beginning at the southwest corner of a parcel of land previously conveyed by said Henry Keller and wife to the Superior Street Railroad Company in volume 235, page 370 of said county records, being on the north line of Whitney street, so called and 99 feet 2 inches along said north line from the center of Giddings avenue so called; thence northerly along the west line of said company's land, 427 feet 7⅛ inches to the south line of Superior street 97 feet 4 inches from a stone in the center of said Giddings avenue, and on the south line of Superior street; thence westerly along the line of Superior street 33 feet 2½ inches to a stone; thence southerly parallel to the west line of land now owned by said company 438 feet 8⅝ inches to a stone; thence easterly along the north line of Whitney street 33 feet 9¾ inches to the place of beginning, containing 0.328 acres of land.

108 Parcel number 3.

Situated in the city of Cleveland, county and State aforesaid, and known as lots Nos. 116, 117, 118, 119 and 120, being 5 lots in Streator and Adams' sub-division of original lots Nos. 338 and 341 of East Cleveland township, said lots being in the aggregate 262 feet front on Russell avenue and 194 feet deep along Lexington avenue.

Parcel number 4.

Situated in the city of Cleveland, county and State aforesaid, and known as sub-lots 150, 151, 148, 149, and 152 of Joseph Lyman's sub-division of original 10 acre lot No. 122 in said city.

Said lots together making a frontage of 200 feet on Case avenue according to the plat of said sub-division in volume 1 of Maps, page 43 in the office of the recorder of said county.

Parcel number 5.

Situated in the city of Cleveland, county and State aforesaid, and known as being part of original East Cleveland township lot No. 385 and described as follows:—Beginning at a stone in the northeast corner of original lot No. 385 in the center of Doan street; thence southerly along the center of Doan street and the easterly line of said lot No. 385, 511.72 feet to a stone in the center lines of Doan and Superior streets; thence northerly along the center line of Superior street 473.23 feet to a stone; thence northerly on a line parallel with Doan street 568.42 feet to a stone in the northerly line of said original lot No. 385; thence easterly along the northerly line of said lot No. 385, 470 feet to the place of beginning, containing 5.82 acres of land.

(Deed Record volume 478, page 365.)

109 Parcel number 6.

Situated in the city of Cleveland, county and State aforesaid, and known as being part of original lot No. 342 in said city and bounded beginning in the south line of Lexington avenue at a point 56 feet westerly from its intersection with the west line of East Madison avenue; and running from thence along the south line of Lexington avenue 56 feet to said west line of East Madison avenue; thence southerly along said west line 61 feet; thence northwesterly in a curved line with a radius of 61° to the place of beginning, said line curving to the west and being the area contained between the convex side of said curved line, the south line of Lexington avenue and the west line of East Madison avenue;

This land is conveyed to the Cleveland City Railway Company solely for the purpose of widening the highways at a point named herein so as to enable said company to construct its cable line therein, the same to be used as a part of the public highway upon condition that upon abandonment for such purposes, the lands above described shall revert to the grantors of said company, their heirs or assigns.

(Deed Record, volume 484, page 297.)

Parcel number 7.

Situated in the city of Cleveland, county and State aforesaid, and known as an easement of a right of way for a street surface cable railroad track or tracks so long as the premises herein described shall be occupied by the Cleveland City Cable Railway Co., its successors or assigns for street purposes over and upon premises as follows:—Being a part of original lot No. 391 in said city and bounded as follows:—Beginning at the point in the said lot where the easterly line of East Madison avenue intersects the northerly line of Hough avenue; running thence along the westerly line of said lot, northerly, 55 feet and 3 inches; thence southeasterly
110 on the segment of a circle having a radius of 56 feet to which the westerly line of said lot is tangent, running a distance of about 75 feet to a point in the southerly line of said lot; and thence westerly on the southerly line of said lot 47 feet and 3 inches to the place of beginning.

Parcel number 8.

Situated in the city of Cleveland, county and State aforesaid, and known as part of original lot 393 in said city and bounded as follows:—Beginning at the point of intersection of the easterly line of Ansel avenue with the southerly line of the premises conveyed by the Cleveland Brewing Co., to the city of Cleveland by deed of September 1891, produced easterly thereto; thence northerly along the east line of the parcel of land in said original lot owned by the Cleveland Brewing Co., the same being the westerly line of lands of Caroline Pentecost 59.58 feet; thence westerly 64.16 feet to said line

of said Ansel avenue; thence southeasterly along said line of Ansel avenue 94.73 feet to the place of beginning, in trust, however, to be used by the Cleveland City Railway Co., for the purpose of maintaining its street railroad as now built and located across said premises, and the remainder of said premises to be opened and devoted to the uses of the public as a public street and highway and as an extension of Hough avenue easterly from its intersection with Ansel avenue, the grant hereby made and the use of said land, however, to be subject to the limitation and condition that in adapting said premises to such public use, the grade of the same shall at no time be higher than the street railway of said company as now located.

In the event said premises shall at any time cease to be used by said railroad company or its assigns for street railway and street purposes then the trust hereby created is to cease and said premises to revert to and become the property of the Cleveland Brew-
111 ing Company or its assigns.

Parcel number 9.

Situated in the city of Cleveland, county and State aforesaid, and known as sub-lots 1, 2, 3, 4, 5, 6. 7, 8, 9, 21, 22 and the south 20 feet in width of sub-lot No. 20 lying next to and bounded on the south by sub-lot No. 21, being 20 feet front on Kirtland street and ruuning back between parallel lines to Asylum court.

All of said sub-lots and parts thereof lying in and being parts of A. K. Johnstone's sub-division of part of original 10 acre lots 127 and 128 in said city.

The plat of said sub-division is recorded in volume 13 of Maps, page 33 in the office of the recorder of said county.

Said lots 1, 2, 3, 4, 5, 6 and 7 together having a frontage of 350 feet on Superior street with a depth of 200 feet.

Said lots 8 and 9 together having a frontage of 66.48 feet on Asylum street and 160 feet depth.

Said lots 21 and 22 and south part of 20 together having a frontage of 88.94 feet on Kirtland street.

According to said recorded plat.

(Deed Record volume 550, page 580.)

Parcel number 10.

Situated in the city of Cleveland, county and State aforesaid and known as sub-lots Nos. 7, 8, 9, and 10, whole, and 5 feet in width off the north ends of sub-lots Nos. 11, 12 and 13 all in Charles Fliedner's sub-division of sub-lot No. 8 of John Outwaite's sub-division of 10 acre lots 48, 49 and 50 in said city.

Said lots 7, 8, 9, 10 and north 5 feet of lots 11, 12 and 13 together making a frontage of 137 feet on Sawtell avenue by 118 feet in depth, according to the plat of said sub-division recorded in volume 5 of Maps, page 6 in the office of the recorder of said county.

112 Parcel number 11.

Situated in the city of Cleveland, county and State aforesaid, and known as sub-lots 5 and 6 of Reuben Yeakel's sub-division of part of original lots 417, 424 and 425 in said city.

Said lots are each 40 feet front on Woodland avenue.

Lot 5 is 173 feet deep and lot 6 is 199 feet deep.

Plat of said sub-division is recorded in volume 5 of Maps, page 16 in the office of the recorder of said county.

(Deed volume 355, page 565.)

Parcel number 12.

Situated in the city of Cleveland, county and State aforesaid, and known as the west end of sub-lots 364, 365 and 366 in Benedict and Root's allotment of part of original lots 48 and 49 in said city and bounded:—Beginning at the southwest corner of said lot 366 extending easterly along Bridge street 100 feet; thence northerly and parallel with the westerly line of said lots 364, 365 and 366, to the northerly line of lot 364; thence westerly on line of said lot 364 to the westerly line of lot 364; thence southerly on said westerly line of lots 364, 365 and 366 to the place of beginning.

(Deed volume 379, page 371.)

Parcel number 13.

Situated in the city of Cleveland, county and State aforesaid, and known as all of sub-lots Nos. 3 and 4 in Lamb and Hooker's sub-division of part of original lots 29 and 30, formerly in Brooklyn township, now in said city.

Said lot No. 3 being 89 feet 11¾ inches front on Detroit street and 302 feet and 3 inches deep on the east line and 332 9/12 feet deep on the west line and 85 feet wide in rear.

113 Said lot No. 4 being 91 feet and 7½ inches front on Detroit street, 332 feet and 9 inches deep on the east line and 363 feet and 4 inches deep on the west line and 66½ feet wide at the rear end.

The plat of said sub-division is recorded in volume 2 of Maps, page 27 in the office of the recorder of said county.

Parcel number 14.

Situated in the city of Cleveland, county and State aforesaid.

All leasehold interests, rights and privileges covered and included by the lease from Elias Simms to the West Side Street Railway Company, which lease is recorded in volume 9 of Leases page 51 in the office of the recorder of said county.

Also all leasehold interests, rights and privileges granted in a lease from Elias Simms to the West Side Street Railway Company

which lease is recorded in volume 8 of Leases, page 455 in the office of the recorder of said county.

Also all leasehold or other interests, rights and privileges as conveyed by the West Side Street Railway Company to the Woodland Avenue and West Side Street Railway Company by deed dated April 9, 1885, and recorded in volume 379, page 371 of Deed Records.

The words "expired June 1, 1891," are written before the first above described leasehold under last above parcel.

The words "expired June 1, 1891" are written before the second above described leasehold under last above parcel.

Parcel number 15.

Situated in the city of Cleveland, county and State aforesaid, known as sub-lots 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211 in block "H" of the Buffalo Company allotment so called in said city.

Said lots 201 and 202 are each 20 feet front on Washington street and 100 feet deep.

Said lots 203 to 211, both inclusive, are each 20 feet front
114 on Sycamore street.

Lots 203 to 207 are each 100 feet deep.

Lots 208, 209, 210 and 211 are irregular in depth.

The original plat of said sub-division is recorded in volume N of Deed Records, page 39 and is transcribed to volume 3 of Maps, page 51 in the office of the recorder of said county.

Parcel number 16.

Situated in the city of Cleveland, county and State aforesaid, and known as part of original lot No. 14, formerly in Brooklyn township, now in said city, bounded:—Beginning on the northerly line of said lot No. 14, at a point 7 chains and 84 links easterly from the northwesterly corner of said lot No. 14; thence south 88½° east along the northerly line of said lot 2 chains and 69½ links to a post; thence south 9 chains and 75 links to the center of Lorain street; thence south 66° west along the center of Lorain street 2 chains and 83 links to lands formerly owned by E. S. Root; thence north ½° west 10 chains and 83 links to the place of beginning, containing 2.72 acres.

(Deed volume 523, page 341.)

Parcel number 17.

Situated in the village of Glenville, county and State aforesaid, and known as sub-lots 1, 2 and 3 on John Crowell's sub-division of sub-lots 3 and 4 of the Peter Miller estate on original lots 361 and 369, formerly in East Cleveland township, now in said village.

Said lots 1, 2 and 3 together have a frontage of 162 feet on the north side of St. Clair street and a depth of 174½ feet on the west side of John street.

According to the plat of said sub-division in volume 4 of Maps, page 31 in the office of the recorder of said county.

115 Except, however, from said premises, a strip of land 10 feet in width across the whole St. Clair Street frontage of said lots, appropriated by the village in the year 1888, to widen St. Clair street to the width of 80 feet.

(Deed Record, volume 468, page 405.)

Parcel number 18.

Situated in the hamlet of Lakewood, county and State aforesaid, and known as commencing at a point in the center line of the old Detroit or Huron road (formerly so called) in the hamlet of Lakewood 422.2 feet measured along said center line in a southwestwardly direction from the intersection of said center line with the center line of the present bridge approach or road leading from said old Detroit road in a westwardly direction to the wagon bridge which crosses Rocky river a short distance above its mouth; thence northwestwardly in a line forming a right angle with said center line of said Detroit road a distance of 199.49 feet to the point of the beginning of a curved line, having a radius of 293.2 feet; thence in a line of regular curvature (having a radius as above stated) a distance of about 250.42 feet (be the same more or less) to a point in the line which separates the lands of the Clifton Park Association on the south from the land on the north known as part of the Simms or Rhodes land; thence in an eastwardly direction along said dividing lines between lands of said Clifton Park Association and said Simms and Rhodes as aforesaid a distance of about 141 feet, be the same more or less to a point in a line forming a right angle with said center line of the old Detroit road and about 321.31 feet to the said center line of the old Detroit road; thence in a southwesterly direction along said center line 222.2 feet to the point of beginning, containing 2.337 acres of land.

(Deed Record, volume 589, page 470.)

116 Parcel number 19.

Situated in the hamlet of Lakewood, county and State aforesaid and known as being all of sub-lots Nos. 34 and 35 and parts of sub-lots Nos. 30, 31, 32, 33, and 36 of the Clifton Park Association allotment of part of section No. 23, Rockport township now in said hamlet of Lakewood, and bounded and described as follows, viz:—Beginning on the northerly line of the Detroit road (so called) at its intersection with the westerly line of a parcel of land conveyed to the grantee, (the Cleveland City Railway Company) by the grantor (the Clifton Park Association) by deed dated January 7,

1895, and recorded in volume 589, page 470, Cuyahoga County Records of Deeds; thence northerly along said westerly line of said parcel about 417 feet to the northerly line of said sub-lot No. 30; thence westerly along the northerly line of said sub-lot No. 30, which is also the southerly line of lands now owned by James F. Rhodes and the estate of Elias Sims, about 121 feet to a stone in the easterly line of Riverside avenue; thence southerly along the easterly line of Riverside avenue 363 feet 3½ inches to a stone at the tangent point of the curve in said easterly line of said street near the Detroit road; thence on a true curve to the left, having a radius of 115 feet, 250 10 1/2/12 feet to the northerly line of the Detroit road; thence easterly along the northerly line of said road about 122.7 feet to the place of beginning.

(Deed volume 650, page 365.)

Parcel number 20.

Situated in the hamlet of Lakewood, county and State aforesaid, and known as being sub-lots 14, 15, 16, 17, 22, 23, 24 and 25 in Thomas Taub's sub-division of part of lot No. 61 in section 21, formerly in the township of Rockport, now in said hamlet, the plat of said sub-division is recorded in volume 18 of Maps, page
117 8 in the office of the recorder of said county.

Said sub-lots 14, 15, 16, and 17 are each 38 feet wide front and rear and about 174 feet deep on the easterly side of Courtland street.

And said sub-lots 22, 23, 24 and 25 are each 34 feet wide front and rear and 184 feet deep on the westerly side of Highland street.

(Deed Record volume 598, page 581.)

STATE OF OHIO, } ss:
Cuyahoga County, }

Arthur Odell being first duly sworn says that he has examined the records of Cuyahoga county and the tax duplicate of the same, and that the foregoing abstracts contain a complete list of the real estate of the Cleveland City Railroad Company and its several constituent companies.

ARTHUR ODELL.

Sworn to before me by the said Arthur Odell and by him subscribed in my presence this 21st day of December, 1898.

JACOB M. CRAWFORD,
Notary Public.

[SEAL.]

Tax fees 40c.

Endorsements on affidavit of Arthur Odell: 5839. U. S. circuit court. The Cleveland City Railway Company, plaintiff, *vs.* The

City of Cleveland, defendant. Affidavit of Arthur Odell on
118 behalf of defendant. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, attorneys for The City of Cleveland.

Affidavit of Wm. G. Taylor.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. | No. 5839. Affidavit of Wm. G. Taylor.

Wm. G. Taylor being first duly sworn deposes and says, that he is a broker and dealer in real estate in and about the city of Cleveland, Ohio; that he has been engaged in such business in said city for the period of 25 years; that he is familiar with real estate values in, throughout and about said city, and that between the 17th day of December, 1898, and the 22nd day of December, 1898, in company with one Chas. E. Pegler and one John W. Taylor he made a complete and thorough examination and view of the real estate of the Cleveland City Railway Company located in the city of Cleveland, for the purpose of ascertaining and estimating the fair and reasonable value thereof; that the number of pieces and parcels of real estate so examined and estimated by him are fully described in the affidavit of Arthur Odell, filed in this case, to which reference is hereby made for a more specific description thereof.

Affiant further says, that in his opinion the fair and rea-
119 sonable value of the real estate of the Cleveland City Railway Company in the city of Cleveland, as shown and described in the said affidavit filed by the said Arthur Odell including all the real estate therein described from parcels No. 1 to 16 inclusive is $139,375.00.

Affiant says that said valuation does not include the value of the buildings and improvements on said real estate.

WM. G. TAYLOR.

Sworn to by the said Wm. G. Taylor and by him subscribed in my presence, this 22nd day of December, A. D. 1898.

[SEAL.] OSCAR J. HORN,
Notary Public.

Tax fee 40 cents.

Endorsements on affidavit of Wm. G. Taylor: 5839. United States circuit court. The Cleveland City Railway Company, complainant, *vs.* The City of Cleveland, defendant. Affidavit of Wm. G.

Taylor, on behalf of defendant. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, att'ys for defendant.

120 *Affidavit of Chas. E. Pegler.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. Affidavit of Chas. E. Pegler.

Chas. E. Pegler being first duly sworn deposes and says that he is a broker and dealer in real estate in and about the city of Cleveland, Ohio; that he has been engaged in such business in said city for the period of five years; that he is familiar with real estate values in, throughout and about said city, and that between the 17th day of December, 1898, and the 22nd day of December, 1898, in company with one John W. Taylor and one Wm. G. Taylor he made a complete and thorough examination and view of the real estate of the Cleveland City Railway Company located in the city of Cleveland, for the purpose of ascertaining and estimating the fair and reasonable value thereof; that the number of pieces and parcels of real estate so examined and estimated by him are fully described in the affidavit of Arthur Odell, filed in this case, to which reference is hereby made for a more specific description thereof.

Affiant further says, that in his opinion the fair and reasonable value of the real estate of the Cleveland City Railway Company in the city of Cleveland, as shown and described in the said affidavit filed by the said Arthur Odell including all the real estate therein described from parcels No. 1 to 16 inclusive is $139,375.00.

Affiant says that said valuation does not include the value
121 of the buildings and improvements on said real estate.

CHAS. E. PEGLER.

Sworn to by the said Chas. E. Pegler and by him subscribed in my presence, this 22nd day of December, A. D. 1898.

[SEAL.] OSCAR J. HORN,
Notary Public.

Tax fees 40 cents.

Endorsements on affidavit of Chas. E. Pegler: 5839. United States circuit court. The Cleveland City Railway Company, complainant, *vs.* The City of Cleveland, defendant. Affidavit of Chas. E. Pegler on behalf of defendant. Miner G. Norton, Ford, Boyd & Crowl, att'ys for City of Cleveland. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Affidavit of Robert B. Rifenberick.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5839. Affidavit of Robert B. Rifenberick.

Robert B. Rifenberick being first duly sworn deposes and says:

That he is thirty-one years of age, a resident of the county
122 of Cuyahoga, Ohio, and is by profession and occupation an electric street railway engineer and builder; that he has followed the profession and occupation of steam and electric street railway engineering and building for the period of about twelve years last past, and that his experience in that line has been in various parts, and various cities of the United States, and has covered the various kinds of steam and electric street railway construction and equipment which have been in use by street railway owners and operators during said period of time.

Affiant further says that his professional and business career commenced a few years prior to the adoption of electricity as a motive-power by street railway owners and operators generally, and that throughout his professional career his work has not only covered the construction of entirely new lines of electric street railway but has also covered the reconstruction of what were originally street railways by horse-power and the changing of the complete equipment thereof so as to adapt the same to the use of electricity as a motive-power; that in the capacity above stated he has been connected with and had charge of the construction of large systems of electric street railway in the city of New Orleans, and has also been connected as an engineer with the construction of various other lines and systems of steam and electric street railway in other cities and places in the United States.

Affiant further says, that he has made an observation and taken a view of the lines and systems of street railway in the city of Cleveland within the ten days last past, with a view of ascertaining the cost of constructing street railways in said city substantially as the same are now constructed, and on such streets and throughout such parts of the city, as the same now exist; that he has taken into consideration the commercial and economic advantages and

situation of said city, the character of the soil, the gradients
123 and general contour of the city and the streets thereof, and particularly that portion of the streets occupied by street railways.

Affiant says, that in view of the conditions existing in said city,

and particularly in view of the fact that the grades on the streets occupied by street railways are generally light; that street railway construction in said city is no greater than it is in average cities; that there are no unusual or extraordinary conditions existing in said city that would make, or tend to make, street railway construction therein extraordinarily expensive; and that based upon his observations and investigations in said city, and upon his experience as an engineer and builder affiant says, that the fair and reasonable cost of constructing a modern, improved, electric street railway line and system of road upon and over such streets of the city of Cleveland as are now occupied by the tracks of the Cleveland City Railway Company is, and would not exceed $35,000 per mile, single track construction, which sum includes the cost of paving a space seven feet in width throughout the entire length of such single track construction, and also includes all necessary power-houses, car-barns and overhead construction and equipment completed sufficient to equip said lines and system of road for the operation of cars thereon; and affiant says, that said estimate is based upon first class construction and equipment in every respect and particular.

Affiant further says, that he is informed, and so states upon information, that the Cleveland City Railway Company, as at present operated, owns and operates about sixty-three miles of single track measurement of street railway in the city of Cleveland.

Affiant says that if such information be correct, that the
124 entire street railway plant and system of the Cleveland City Railway Company can at present be reproduced with modern first class construction and equipment, including everything necessary for the management, care and operation of said system for the sum of two million two hundred and five thousand dollars.

Affiant further says, that an electric street railway system constructed at the cost above named, and according to modern methods, and with modern materials and equipment, as above stated, would make a materially better, and more serviceable road than that which is now maintained and operated by the Cleveland City Railway Company.

ROB'T B. RIFENBERICK.

Sworn to by the said Robert B. Rifenberick, before me, and by him subscribed in my presence, this thirteenth day of December, A. D. 1898.

CHAS. G. F. VON W. EMERY,
Notary Public.

[SEAL.]

Tax fee forty cents.

Endorsements on affidavit of Robert B. Rifenberick: No. 5839. U. S. circuit court. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of Robert B. Rifenberick on behalf of defendant. Filed Dec. 22, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, attorneys for the City of Cleveland.

125 *Affidavit of J. B. Hanna.*

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } Affidavit of J. B. Hanna.

STATE OF OHIO, *Cuyahoga County,* } *ss:*

J. B. Hanna, being duly sworn, says that he is the secretary and treasurer of the complainant company and has been actively connected with the business of operating street railroads in the city of Cleveland for the past fifteen years; that before the organization of the present company, he was connected with and familiar with the construction, maintenance and operation of the West Side Street Railroad Company, and subsequently, after the consolidation of the last mentioned company with the Woodland Avenue, he was an executive officer and familiar with the property and affairs of the Woodland Avenue & West Side Street Railroad Company; that during the fifteen years that affiant has been connected with said properties, they have been practically reconstructed and some portions of the property have been renewed more than once; that he is entirely familiar with all of the property of the present company, and also with the cost of the construction and complete equipment of electric street railway at the present market prices of material and labor; that he has read the affidavit of Robert B. Rifenberick, which affidavit he understands to state that at the present prices of material, the property of the complainant company could be produced, exclusive of real estate, for $35,000 per mile of single track.

126 Affiant says that from his knowledge of the cost pertaining to such construction, it is his judgment and he alleges the fact to be that such construction as is mentioned in said affidavit of said Rifenberick could not be reproduced for $50,000 per mile of single track.

Affiant further says that during the past ten years, there has been a very great change in the prices of much of the material and equipment involved in the construction and operation of electric railways; that ten years ago a car equipment, consisting of two 15 H. P. motors, cost not less than $2,400.00 and that at the time much of the electrical equipment was purchased by complainant company in 1892, the cost of a 30 H. P. motor was about $1,900.00 per car; that within the past few years there has been such change in the cost price of such motors that at present motors of twice the horse power can be pur-

chased in the market for about one-third the former cost of fifteen horse power motors.

Affiant says that much of the rail which was purchased from time to time by the constituent companies forming the present complainant company cost sixty to sixty-five dollars per ton, and that the same rail in the present market can be had for less than one-half such amount. And affiant says that from his long connection with the affairs of the complainant company and its predecessors, he is able to state, and therefore states the fact to be as alleged in the bill of complaint herein, that the actual investment in money in the various properties now belonging to the complainant company exceeded $5,500,000.00 and that such purchases were made as advantageously as good business men could make them; and that, as stated in the bill of complaint, upon most of the lines now owned by your orator, no return whatever was received for many years upon such large investment, and that, were said investment computed at six per cent. per annum, it would represent to your orator an investment exceeding the amount of its authorized capital stock of eight million dollars.

127 Further affiant saith not.

J. B. HANNA.

Sworn to and subscribed before me by the said J. B. Hanna, this 21st day of December, A. D. 1898.

CLARENCE E. SANDERS,
[SEAL.] *Notary Public.*

Endorsement on affidavit of J. B. Hanna: In the U. S. circuit court. No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of J. B. Hanna. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, att'ys for complainant.

Affidavit of George G. Mulhern.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of George G. Mulhern.

STATE OF OHIO, *Cuyahoga County,* } *ss:*

128 George G. Mulhern, being duly sworn, says that he is and has been since the organization of the complainant, its

superintendent; that prior to the consolidation forming the Woodland Avenue & West Side Street Railroad Company, he was the superintendent of the West Side Street Railroad Company, and after such consolidation, he was the superintendent of the Woodland Avenue & West Side Street Railroad Company up to the time of its consolidation with the cable company.

Affiant says that he was entirely familiar with the practical operation of the Woodland Avenue Street Railway Company and the West Side Street Railroad Company prior to their consolidation, and that up to the time of such consolidation, there was no through car service over said two lines of road between the west and east sides of the city, and each of said roads was operating under an independent franchise; that no transfers were given by one company good upon the other, and that passengers traveling from the east to the west side of the river, or *vice versa*, were compelled to pay two fares, one upon each line, of five cents.

Affiant says that prior to the consolidation forming the complainant company, there was no system of transfers between the different companies forming such consolidated company, and that since such consolidation a system of transfers has been adopted and in use and through car service has been established, so that passengers may now ride from the easterly to the westerly terminus of complainant's lines for one fare of five cents, or twenty-two tickets for one dollar, the distance being about fourteen miles; that a system of transfers has also been adopted on a line known as the "Cross-town line," operated upon Wilson avenue, upon which passengers upon that line can be transferred on the payment of one fare, so that passengers can travel either easterly or westerly from Willson avenue to the terminus of any of complainant's lines.

129 Affiant says that the car service which has been introduced by the complainant and its predecessors is in all respects of the most improved character, and that, based upon the actual cost of the service rendered, as well as upon what is the almost uniform charge for similar service in other cities, the fare which is being charged by the complainant company is just and reasonable.

Affiant says that he is familiar with the value of complainant's property and of the investment which such property represents and the cost of its operation, and, from such information and his long experience in such matters, he states that the property could not be operated at a profit, assuming that the Hopkins ordinance of October 17, 1898, should be put into practical operation.

Affiant further says that, as the company is now lawfully and as required by the ordinances under which it is acting, so operating its property with through lines and systems of transfers and charging but one fare for any distance upon its lines, it would be impracticable to continue such operation and at the same time put into effect the provisions of said Hopkins ordinance as applicable to that portion of its present main line which was originally the

Kinsman Street line; that the requirements of the present ordinances and of the Hopkins ordinance are so far inconsistent that affiant knows of no way in which the property could be operated in accordance with both of said ordinances.

GEO. G. MULHERN.

Sworn to and subscribed before me by the said George G. Mulhern this 21st day of December, A. D. 1898.

CLARENCE E. SANDERS,
Notary Public.

[SEAL.]

130 Endorsements on affidavit of Geo. G. Mulhern: No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of Geo. G. Mulhern. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, att'ys for complainant.

Affidavit of J. B. Hanna.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of J. B. Hanna.

THE STATE OF OHIO, *Cuyahoga County,* } *ss:*

J. B. Hanna, being duly sworn, says that he is secretary and treasurer of the above-named complainant; that he is entirely familiar with its operation and with its gross and net receipts; that, as applicable to the contention of the city that the exhibit made in complainant's bill as to the practical operation of the proposed ordinance reducing fares is not an accurate statement because it pertains to the entire line, affiant says that he has made a computation as to what the practical effect would be if said ordinance reducing fares was put in operation only upon the Woodland
131 Avenue line, to which he understands the city claims it is alone applicable; and, following the same method as in the bill of complaint, he submits the following statement showing what the loss in earnings would have been upon that particular line as nearly as he can estimate the same, having regard to the fact that the line is operated as a part of the through line, and he believes the following statement to be substantially accurate.

J. B. HANNA.

Sworn to and subscribed before me this 21st day of December 1898.

CHARLES C. OWENS,
Notary Public.

[SEAL.]

132 In the year 1897, the Woodland Ave. line carried

3,059,812	passengers at 5 cts.	$152,990.60
1,374,698	" " 11 for 50 cts.	62,486.27
		$215,476.87

Average rate of fare per passenger carried 4.86 cts.

At the rate of fare sought to be fixed by said ordinance of October 17, 1898, receipts in 1897, would have been

3,059,812	passengers at 4 cts.	$122,392.42
1,374,698	" " 7 for 25 cts.	49,096.35
		$171,488.77

A reduction of 20.4% or $43,988.10 and an average rate of fare per passenger carried at 3.87 cts.

In order to have made the gross receipts equal those of 1897, it would have been obliged to carry in 1897, 1,136,643 more passengers than it did in fact carry.

Assuming that under the proposed ordinance the use of tickets would largely increase, that at least 70% of the passengers who ride would purchase tickets, on the assumption that the proposed rates of fare had been charged in 1897, and that 70% of the passengers who rode did so upon tickets then the receipts would have been as follows:

From 1,330,353	passengers at 4 cts.	$53,214.12
" 3,104,157	" at 7 for 25 cts.	110,862.75
		$164,076.87

A reduction of 24% or $51,400.00

An average rate of fare per passenger carried 3.70 cts.

And to have earned at this rate the gross receipts of 1897, it would have been obliged to carry 1,389,189 additional passengers.

133 Gross receipts of the Woodland Ave. line in 1897, were	$215,476.87
Ordinary operating expenses	135,218.29
Its net receipts	$80,258.58
At the proposed rates of fare, assuming that the same number of passengers would have paid cash, the gross receipts in 1897, would have been	$171,488.77
Operating expenses	135,218.29
Net receipts	$36,270.48

That is, for the year 1897, the company would have suffered a loss in income of the difference between..... $80,258.58
and..... 36,270.48

$43,988.10

Or nearly 55% of its net income.

At the proposed rates of fare assuming that 30% of its passengers would have paid cash and 70% would have bought tickets its gross receipts in 1897, would have been..... $164,076.87
Its operating expenses..... 135,218.29

Its net receipts..... $28,858.58
That is, for the year 1897, the line would have suffered a loss in income of the difference between..... $80,258.58
and..... 28,858.58

$51,400.00

or more than 64% of its net income.

134 Endorsements on affidavit of J. B. Hanna: No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of J. B. Hanna. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, att'ys for compl't.

Hearing on Rule in Progress.

October Term, A. D., 1898, to-wit, December 22, 1898.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO. *vs.* THE CITY OF CLEVELAND. } No. 5839. Chancery.

This day this cause came on to be heard on the rule to show cause why a temporary injunction should not issue herein, and the court having heard a part of the argument of counsel and the hour of adjournment having arrived, the further hearing was continued until tomorrow morning at 10 o'clock.

Hearing on Rule in Progress.

October Term, A. D. 1898, to-wit, December 23, 1898.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

135 This day this cause again came on to be heard on the rule to show cause why a temporary injunction should not issue herein, and the court having heard the further arguments of counsel but not the conclusion thereof, and the hour of adjournment having arrived, this cause was continued until tomorrow morning at 10 o'clock.

Order of Submission.

October Term, A. D. 1898, to-wit, December 24, 1898.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

This day this cause came on again to be heard on the rule to show cause why a temporary injunction should not issue herein, and the court having heard the arguments of counsel concluded, took the same under advisement.

Replication.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } No. 5839. In Equity. Replication to Answer.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereto, says that it will aver, maintain

and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto; and that said answer of the said
136 defendant is uncertain, untrue and insufficient to be replied unto by repliant without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

Endorsements on replication: No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Replication. Filed Jan. 21, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, att'ys for compl't.

Order of Continuance.

October Term, A. D. 1898, to-wit, February 6, 1899.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting under designation, and Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

137 This cause is continued to the next term of this court.

Order of Continuance.

February Term, A. D. 1899, to-wit, April 3rd, 1899.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

This cause is continued to the next term of this court.

138 *Opinion of the Court.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY
v.
THE CITY OF CLEVELAND. } # 5839. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
v.
THE CITY OF CLEVELAND. } # 5840. Equity.

Opinion of the court.

RICKS, *J.*:

The constitution of Ohio has empowered the legislature to confer upon the city of Cleveland the authority to operate lines of railway through its streets. Acting under this delegated power, as expressed in the Revised Statutes, section- 2501, *et sub.*, and 3437, *et sub.*, the city council, from time to time, has made grants to the street railroads conferring privileges upon them, and, at the same time, prescribing the terms and conditions under which such lines should be located and operated.

Among the powers so vested in the city was the right to prescribe the rate of fare to be collected during the life of each grant. The city, acting under this general authority so conferred, passed ordinances at different times pertaining to the street railways, which make a printed volume, and are in evidence before the court. These ordinances, granting, sometimes original, and sometimes ad-
139 ditional, authority, were accepted by the street railway companies; and these acceptances, on the one side, and grants made with conditions on the other, became a contract between the parties, which could not be annulled or amended without the consent of both parties.

St. R. R. Co. *v.* Smith, *et al.*, 29 O. S. 292;
R. R. Co. *v.* Village of Carthage, 36 O. S., 634;
City of Columbus *v.* St. R. R. Co., 45 O. S., 104;
City Ry. Co. *v.* St. R. R. Co., 166 U. S., 557;
Chicago *v.* Sheldon, 9 Wall., 50;
New Orleans Water Co. *v.* Rivers, 115 U. S., 634.

These ordinances, so moulded into contracts under the legislative power hereinbefore referred to, are, in effect, laws of the State of Ohio, and therefore are within the inhibition of the fourteenth amendment to the Constitution of the United States, which is directed quite as pointedly to the legislative power of the State or munici-

pality as to the executive or judicial; so that the obligations of contracts by legislation are protected by the Federal Constitution, which prohibits a State from passing any law impairing the obligations of contracts, or the taking of property without due process of law. (City Ry. Co. *v.* Citizens' R. R. Co., 166 U. S., 562.)

This court has jurisdiction to afford the relief prayed for in these bills, and has authority to declare invalid the ordinances now sought to be enforced, if, as contended by the complainants, the ordinances involved do impair existing contract rights, in practical operation, deprive the complainants, respectively, of property, without due process of law.

In City Ry. Co. *v.* Citizens' R. R. Co., 166 U. S. 562, the court say: "All that is necessary to establish the jurisdiction of the court is to "show that the complainant had, or claimed in good faith to have, a "contract with the city which the latter had attempted to impair."

"Conceding that the legislature of the State alone had the right "to make such a grant, it may, as was observed in Wright *v.* Nagle,
"101 U. S. 792–794, exercise authority by direct legislation,
140 "or by agency duly established, having power for that pur-
"pose. The grant, when made, binds the public, and is, "directly or indirectly, the act of the State. The easement is a "legislative grant, whether made directly by the legislature itself, or "by any one of its properly constituted instrumentalities." See also, Saginaw Gas Light Co. *v.* Saginaw, 28 Fed. Rep., 529; Weston *v.* Charleston, 2 Pet., 461; New Orleans Water Co. *v.* Rivers, 115 U. S., 674.

That a bill in equity seeking a judicial decree declaring an ordinance which impairs the contract rights of the complainant, or takes from him or it property without due process of law, is a proper remedy, has been specifically determined by the Supreme Court. C. M. & St. P. Ry. *v.* Minnesota, 134 U. S. 460; Smythe *v.* Ames, 169 U. S. 466.

As the various ordinances in force when the council passed the so-called "low fare ordinances," in October, 1898, prescribed the rate of fare which the companies might charge during the life of each grant, the city possessed no power to modify such grant as respects the rate of fare, unless such power of modification was reserved in the ordinance making the grant. The statutes of Ohio confer power upon municipalities to determine the conditions of the grant at the time it is made, including fixing the rates of fare to be charged, but no power to thereafter prescribe rates of fare. Where the grant itself fixes the rate of fare, a reserved right of regulation does not authorize a municipality, after the rate of fare has been so fixed, to modify or change it during the life of the grant. (Old Colony Trust Co. *v.* City of Atlanta, 83 Fed. Rep. 39.)

It is held by the superior court of Cincinnati, in Smith *v.* Cincinnati:—

"A general ordinance providing for the construction and operation of a street railway within the city limits, which provided that,

on the acceptance by the existing companies of the terms of the ordinance, it shall thereupon be operative and binding as a
141 contract between the city and the company so accepting the same, and that the street railroad shall be guided, governed and regulated by the following conditions, and such lawful and reasonable restrictions as the council may thereafter pass, does not reserve to the council the right to abridge or destroy any of the contract rights of the company, but only to make and enforce proper and reasonable regulations as to the operation or construction of the routes."

It is apparent that, whether the ordinances of October 17, 1898, are valid and enforceable against the respective complainants, depends, in the first instance, upon the solution of the question whether the reservations in the ordinances of 1879, authorized the action taken by the council in passing these "low fare ordinances" in October, 1898.

If, subsequent to the passage of these ordinances of 1879, no other grants had been made prescribing rates of fare upon the lines referred to in the ordinances of 1879, the only question presented would be, whether the reserved right is now being exercised in a reasonable manner. It appears, however, that numerous other ordinances have been passed and accepted by each of the complainant companies relating to the same subject matter, viz: the rate of fare to be charged upon the same lines of railway referred to in the ordinance of 1879. It therefore becomes necessary to inquire how far, if at all, the contract rights of the parties have been changed by these subsequent ordinances.

The general principles to be followed in such an examination are well settled. In U. S. *v.* Tynen, 11 Wall. 92, the rule is stated as follows:—

"When there are two acts on the same subject, the rule is, to give effect to both, if possible, but, if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates, to the extent of the repugnancy, as a repeal of the first; and, even where two acts are not, in express terms, repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." See, also, Dist. of Columbia *v.* Hutton, 143 U. S. 18; U. S. *v.* Claflin, 97 U. S. 546.

And again, where parties, having entered into a written contract, thereafter make a second contract relating to the same sub-
142 ject, to the extent that the provisions of the second contract are inconsistent with those of the first, the last contract, and not the first, measures the obligations of the parties.

In Lawson's Rights and Remedies, vol. 5, sections 2569–2570, the rule is stated as follows:—

"One written contract, complete in itself, will be conclusively presumed to supersede another one made prior thereto in relation to the same subject matter. The re-cission may be implied in some

cases; thus, if an agreement be made between the same parties containing the same matter, in which the terms of the latter are inconsistent with those of the former, so that they cannot subsist together, the latter will be construed to discharge the former." See, also, Chrisman *v.* Hodge, 75 Mo. 413; Hargrave *v.* Conroy, 19 N. J. Eq. 281; McDonough *et al. v.* Cain, 75 Ind. 181; Howard *v.* Wilmington St. R. R. Co., 1 Gill (Md.) 311.

With these principles in mind, we proceed to inquire, as respects the Cleveland City Railway Company, whether the common council of Cleveland, in October, 1898, was authorized, under then existing contracts between it and the said company, to take action under the reservation in the ordinance to the Kinsman Street Railroad Company of 1879, and reduce fares, as was attempted to be done by the ordinance of which complaint is made in the bill.

The ordinance, by virtue of which this reserved right to reduce fares is claimed, was passed August 25, 1879, and entitled "An ordi-"nance granting a renewal of franchise to the Kinsman Street Rail-"road Company to reconstruct, maintain and operate its street rail-"road in and through certain streets of the city of Cleveland," and it authorized the Kinsman Street Railroad Company to construct, maintain and operate a double track street railroad from Water street to Madison avenue upon Kinsman street (now Woodland avenue) and by section 7 of this ordinance it was provided as follows:—

"Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare, as it may deem justifiable and expedient."

143 This ordinance, then, was a grant to the Kinsman Street Railroad Company, and related to the operation by such company and its successors from Water street to Madison avenue on Kinsman street, the name of the latter street having been subsequently changed to Woodland avenue.

It appears in evidence that the successor of the Kinsman Street Railroad Company was the Woodland Avenue Railway Company, and that from about 1880 to 1885, the Woodland Avenue Railway Company owned and operated this so-called Kinsman Street line. After the Woodland Avenue Railway Company acquired such line, to-wit: in 1883, an ordinance was passed by the council, and duly accepted by the company, by which the company was authorized to extend its tracks upon Woodland avenue upon certain terms and conditions expressed in the ordinance; and in said ordinance it was provided that its existing railway and this extension should thereafter be operated as an entire line, and that but one fare of five cents over its entire line, including said extension, should be charged. This ordinance of 1883, relates to the operation of the company's street railroad as well over the line referred to in the

Kinsman Company ordinance of 1879, and contains no reservation of the right to thereafter increase or diminish the rate of fare.

In 1885, the Woodland Avenue Railway Company and the West Side Street Railroad Company consolidated. At the time of such consolidation, the West Side Street Railroad Company was operating a line of railroad chiefly upon the west side of the river, under a grant from the city of Cleveland expiring twenty-five years from July, 1883; and, under the terms of the grant, was authorized to charge a cash fare of five cents, the city having reserved no right to change such rate of fare during the period of the grant. The effect of the consolidation was to establish a new main line extending from the southeasterly to the westerly portion of the city and with reference to such consolidation the common council, on February 16, 1885, passed an ordinance entitled :—

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"An ordinance to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company, and said companies, may be consolidated.

"SEC. 1. Be it ordained by the city council of the city of Cleveland that the consent of the city is hereby given to the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company, upon the following conditions: The said consolidated company to carry passengers through, without change of cars, by running of the cars through from the workhouse, on the line of the Woodland Avenue Railway Company, to a point on the West Side Street Railroad Company where Gordon avenue crosses Lorain street, and, when practicable in the judgment of the council to do likewise on the branches of the consolidated lines; and that, for a single fare from any point to any point on the lines or branches of the consolidated road, no greater charge than five cents shall be collected, and that tickets, at the rate of eleven for fifty cents, or twenty-two for one dollar, shall at all times be kept for sale on cars by conductors."

This ordinance, as appears in evidence, was duly accepted by the consolidated company, the Woodland Avenue & West Side Street Railroad Company, and it is to be observed that it had reference to and included the operation of cars as part of a through line upon that portion of Woodland avenue which is referred to in the grant to the Kinsman Street Railroad Company of 1879, and amounts to an agreement on the part of the Woodland Avenue & West Side Street Railroad Company that it will thereafter carry passengers over such entire route at a cash fare of five cents, and ticket fare by tickets sold at the rate of eleven for fifty cents, or twenty-two for one dollar.

It further appears that, in April, 1887, the Woodland Avenue & West Side Street Railroad Company accepted an ordinance passed

by the city council relating to an additional track upon Franklin avenue, and that in such ordinance it is provided that the grant therein made should continue and terminate with the grant on the main line of said company, on the 10th day of February, 1908,
145 and that the grant was made upon the express condition that no increase of fare should be charged by said railway company on any part of its main line or on such extension; so that but one fare, not to exceed five cents, should be charged between any points on said company's main line or extension, and that said company should sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar.

This grant, by its terms, does not expire until the 10th day of February, 1908, and it requires the company to carry passengers at a cash fare of five cents during that period, over its entire main line; as well as its extension; and it also appears that part of the main line over which it was so required and agreed to carry at the rate of five cents cash fare was the line of railway operated on Woodland avenue, (formerly Kinsman street), under the grant made to the Kinsman Street Railroad Company in 1879.

Again, in August, 1887, an ordinance was passed and accepted by the Woodland Avenue & West Side Street Railroad Company relating to the further extension of its tracks on Kentucky street, and in this ordinance it is provided that the grant shall expire with the grant of the main line on February 10, 1908, and that it is made upon the condition, agreed to by the company, that no increase of fare shall be charged by said company on any part of its main line or extensions, and that but one fare, not to exceed five cents, should be charged between any point and any other point on said company's main line or extensions, and that tickets should be sold at eleven for fifty cents or twenty-two for one dollar. This grant has not yet expired, and the main line, in respect to which the company so agrees to operate at a cash fare of five cents, includes the line of railway operated under the grant to the Kinsman Street Railroad Company in 1879.

On June 20, 1892, the Woodland Avenue & West Side
146 Street Railroad Company accepted a further ordinance passed by the council, relating to an additional track upon Kinsman street, which ordinance imposed various additional obligations with respect to paving and repairing, and involved the expenditure of a considerable sum of money on the part of the company; and in this ordinance it is provided that it is granted upon the condition that the company shall charge but one fare between any points on said company's main line and extensions, and sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar; and that the grant shall terminate with the grant of the company's main line, on February 10, 1908. This ordinance is in full force, and is an agreement upon the part of the company to carry at the rate of fare stated, good for passage over its entire main line and extensions, including, as part of its main line, the line upon Woodland avenue, (formerly

Kinsman street,) operated under the original grant to the Kinsman Street Railroad Company, in 1879.

It also appears, from an inspection of the ordinances, that in each instance in which new grants were made to these companies, new and valuable considerations passed to the city for the making of the same, by way of increased requirements for paving, and additional accommodations in the operation of cars.

It appears in the bill and evidence that the complainant, The Cleveland City Railway Company, was formed, on May 13, 1893, by a consolidation of the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company. The last named company, at that time, owned and operated lines of street railway upon Superior street by cable power, and upon St. Clair street by horse power; and was operating under grants of the city of Cleveland for a period of years which has not yet expired; and the grants under which said cable company was oper-
147 ating authorized it and its successors, throughout the entire period of said grants, to charge a cash fare of five cents, there being in none of such grants any reservation of any right on the part of the city council to increase or diminish the rate of fare to be charged; and the company, at the time of the consolidation, was operating its road and charging a cash fare of five cents, as authorized in the ordinances of the city.

Under the consolidation it was proposed to operate all the lines of the two constituent companies as an entire system, to operate through cars thereon, and permit passengers, for one fare of five cents, to ride from one end of said line, so consolidated, to the other; and, such being the purpose of the consolidation, on May 13, 1893, a communication was addressed to the common council of the city of Cleveland, as follows:

"To the honorable council of the city of Cleveland, Ohio:

"The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company have agreed to consolidate their two lines into the Cleveland City Railway Company; the consolidation to take effect June 1st, 1893. It is proposed, on June 1st, 1893, to immediately issue proper transfers, without extra charge, so that passengers on any line of the Woodland Avenue & West Side Street Railroad Company may be transferred to, and have a continuous passage upon, any line of the Cleveland City Cable Railway Company within the limits of the city of Cleveland, and also so that passengers upon any line of the Cleveland City Cable Railway Company may be transferred to, and have a continuous ride upon any line of the Woodland Avenue & West Side Street Railroad Company within the city of Cleveland; only one fare to be charged for such ride; and, as soon as the necessary improvements can be made, additional cross-town lines will be run, and only one fare charged for a continuous ride upon any additional lines within the city of Cleveland."

On May 15, 1893, the common council of the city passed a resolution approving and consenting to the consolidation of the companies, and the operation of cars, upon the terms stated in said communication.

It appears in evidence that, since the consolidation forming the said complainant company, The Cleveland City Railway Company,
148 it has continued the operation of its various lines of street railway, as proposed in said communication; has continued to charge the same cash fare of five cents for each passenger; has put in force the system of transfers contemplated in the council resolution; and has kept on sale tickets at the rate of eleven for fifty cents, or twenty-two for one dollar.

It also appears that no one of the grants under which the constituent companies which formed said complainant were authorized to operate their cars on their various lines of railway at a cash fare of five cents, and to sell tickets at the rate of eleven for fifty cents, has expired, but that each and all of said ordinances are in full force, and that none of said grants expire prior to the year 1908.

This being the situation, can the city successfully contend that the reservation in the ordinance of 1879, relating to the Kinsman Street Railroad Company, is now operative as respects the complainant, The Cleveland City Railway Company? Prior to 1885, the West Side Street Railroad Company was operating upon the west side of the Cuyahoga river. There was no interchange of traffic by transfer between it and the Woodland Avenue Railway Company, and passengers were obliged to pay a cash fare upon each road. The West Side Company was operating under a grant running for twenty-five years from February, 1883, entitling it to charge a cash fare of five cents. The consolidation of the Woodland Avenue and West Side Companies was made upon the condition that a new through line of street railroad should be established, so that, for a single fare, passengers should be carried from any point to any point on the lines or branches of the consolidated company. Upon the taking effect of this consolidation, the relations of the two companies to the city were so far changed that, whereas the companies before had operated independent lines of railroad and charged separate fares, a new through line was established, and
a rate of fare fixed upon the entire line, of five cents.
149 The right to so charge five cents, and to carry at ticket fare at the rate specified, of course involved the right to charge such fare for the whole or any portion of the distance traveled on the line. It was competent for the companies and the city to at that time agree with respect to the terms and conditions, including the rate of fare, upon which this through line should be operated. The parties did make such contract, and one of the terms of the contract related to the rate of fare to be charged over the entire line; and part of the line with respect to which the rate of fare was so fixed in 1885, was the same line referred to in the Kinsman Street Railroad Company ordinance of 1879; that is to say, the

city and the railway companies, in 1885, contracted with respect to the same subject matter referred to in the ordinance to the Kinsman Street Railroad Company in 1879. This ordinance of 1879, at the time, related solely to the rate of fare upon Kinsman street, operated as an independent line. The ordinance of 1885, is a contract with respect to the same subject matter, but establishes a rate of fare which should apply to the Kinsman Street line, not as an independent line, but as part and parcel of a direct through line from the southeasterly to the westerly part of the city. It is to be observed that no reservation is contained in this ordinance of any right to increase or diminish the rate of fare therein fixed, and the right to operate under this ordinance of 1885, was in full force in October, 1898. It must follow that no power existed in the council, in 1898, to change the rate of fare which had been so established by agreement between the parties.

Again, it is apparent that the existence of any such reservation is inconsistent with the right which is expressly granted by the ordinance of 1885. The consolidated company certainly acquired the right to carry to the end of the term at five cents over the
150 entire line or any portion thereof. This right could not co-exist with a right in the council to reduce the rate of fare during the period, as respects a portion of the line. By the contention of the city, the right to reduce could now only be made applicable to the Kinsman Street line and its extension. The city, however, contracted in 1885, that the company might carry over the Kinsman Street line, as part of the through line, at a cash fare of five cents; from which contract it necessary follows that the entire contract relations of the company and the city, as respects the rate of fare to be charged on the Kinsman Street line, were merged in the contract of 1885, and the subsequent ordinances by which the Kinsman Street line ceased to be independent and became part and parcel of a through line, upon which a rate of fare for the full period of the grant was established.

By the subsequent ordinances of 1887 and 1892, running to the Woodland Avenue and West Side Companies, it is, as respects each of them, as before pointed out, expressly provided that their conditions as respects fare shall be applicable to the entire main line of the company, that the rate of fare shall continue to be five cents until the expiration of the several grants, and that the grants do not expire until the 10th day of February, 1908.

Again, in determining the contract rights of the complainant company, regard must also be had to its rights under the grants to the Cleveland City Cable Railway Company, which the present company acquired by the consolidation in 1893. The cable company had the right to operate, at a cash fare of five cents, its independent lines of railway. By virtue of the consolidation, its various lines became part of a great through system, operated by the consolidated company, whereby the public acquired the right of a continu-

ous passage over the entire line for one fare of five cents, or
151 ticket fare at the rate of eleven tickets for fifty cents, or twenty-two for one dollar. The consolidated company, by virtue of such consolidation, acquired all the rights which had before pertained to the constituent companies with respect to the rates of fare which it was lawful to charge, except so far as it had voluntarily modified the same by entering into the consolidation; and it then became the duty of the company, and in the performance of such duty it acquired a corresponding right, to carry over its entire line, or any portion thereof, at a cash fare of five cents. A portion of the entire system which this company is now operating under these several grants from the city was formerly the line of the Kinsman Street Railroad Company, and the reservation under which the city now claims the right to reduce rates of fare upon the portion of the line which was formerly the Kinsman Street line was made with reference to, and can only have reference to, the operation of the Kinsman Street line as an independent line. Now the situation has so far changed that, by operation of law, and by express contract with the city of Cleveland, this original Kinsman Street line has become part and parcel of a through line, and, as respects the rates of fare which may be charged upon such through line, the city and the railway company have entered into various contracts expressly fixing the rates of fare to be charged over the through line or any part thereof.

If the ordinances, as respects rates of fare, which we have been examining, passed since 1879, are to be construed as statutes, it follows that, having been passed subsequent to the ordinance of 1879, relating to the Kinsman Street Railroad Company and relating to the same subject matter, they are so far inconsistent with the ordinance of 1879, as to operate as a repeal thereof.

If we treat these subsequent ordinances simply as contracts,
152 it is apparent that, having entered into a contract in 1879, the city has subsequently entered into various other contracts relating to the same subject, and that these later contracts are so far inconsistent with the provisions of the original ordinance as that the rights of the parties must now be measured by their latest contract, and not by the original agreement.

Again, the inconvenience, if not the absolute impracticability, of enforcing the obligations of both the original ordinance of 1879, and the subsequent ordinances, in and of itself must well nigh force the conclusion that the rights of the parties must be gathered from these later, rather than from the original ordinance.

The complainant company confessedly has the right by contract to carry over its entire line, or any portion thereof, at a cash fare of five cents, and this it may do until its present grants expire in the year 1908; and what the city proposes, by the ordinances of 1898, is to compel the company, as respects a portion of this line, to carry at a cash fare of four cents. The right to carry at five cents over the whole line, or any portion thereof, is inconsistent with the obligation

to carry for less than five cents over some portion of the through line.

It is apparent that the relations between the city of Cleveland and the complainant, as the successor of the various companies out of which it has been formed, have been so far changed by subsequent ordinances and contracts and consolidation, that the reservation contained in the ordinance of 1879, relating to the Kinsman Street Railroad Company, and authorizing the council to thereafter increase or diminish the rate of fare upon such line, is not and cannot now be made operative, legally, as against the complainant company, The Cleveland City Railway Company.

By reason of the various ordinances and contracts which
153 the complainant company and its predecessors have entered into with the city of Cleveland since the ordinance of 1879, the various railroad companies assumed different and much larger obligations in the carrying of passengers than were imposed upon the Kinsman Street Railroad Company by the ordinance of 1879. In almost every instance, the company agreed to carry passengers further, and, at the time of the consolidation of the Woodland Avenue and West Side Companies, the service which the railway company agreed to give to the citizens desiring to ride as passengers, it may fairly be said, was doubled, and the city and its citizens received from the railway company large and valuable concessions, which concessions formed a part of the consideration for the passage of the ordinances and the making of the contracts. No other conclusion can be reached than that the relations between the city of Cleveland and the complainant, as the successor of the various companies out of which it is formed, have been so far changed by the various contracts entered into since 1879, that the city is estopped from claiming that the reservation contained in the ordinance of 1879, can now be used to either increase or diminish the rate of fare upon a small portion of the line of the Cleveland City Railway Company.

As respects the complainant, The Cleveland Electric Railway Company, a very similar question is presented by the ordinances before the court. The city contends for the validity of the "low fare ordinance" passed as respects this last named complainant, by virtue of an ordinance passed in 1879, granting a renewal of franchise to the East Cleveland Railroad Company. By this ordinance, set forth in the bill, the East Cleveland Railroad Company and its successors were authorized to reconstruct, maintain and operate a double track street railroad from Superior street east-
154 erly, through designated streets, including Euclid avenue, to Willson avenue; and, by section 6 of said ordinance, it was provided:

"Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of the line herein renewed, but said company may charge a reasonable compensation for carrying packages. The council, however, reserves the right to

hereafter increase or diminish the rate of fare, as it may deem justifiable and expedient."

It appears by the allegations of the bill, and in proof, that, prior to the 15th day of September, 1879, the East Cleveland Railroad Company was operating a line of railway from the intersection of Superior and Water streets to the easterly limits of the city, on Euclid avenue, under various grants, some of which emanated from the city council, others from the county commissioners, and others from the authorities of the village of East Cleveland prior to its annexation to the city. At that time, there was but a single track east of Willson avenue upon Euclid avenue, and the company, under its grants, had the right to charge passengers one fare from Water street to Willson avenue another from Willson avenue to Fairmount street, and still another from Fairmount street east; and was in fact, charging two fares of five cents each, each way between Water street and the city limits.

This was the situation when the council passed the ordinance of September 15, 1879, containing the reservation with respect to fare, under which the city claims the right to pass and enforce the ordinance of October 17, 1898. After the passage of this ordinance, the company continued the operation of its line thereunder up to April 4, 1883, and, as it was permitted to do, charged one fare between Water street and Willson avenue, and an additional fare of five cents from Willson avenue easterly to the end of its line.

On April 4, 1883, the council passed an ordinance which was accepted by the company, granting it the right to build and operate an additional track on Euclid avenue, between Willson avenue and the easterly line of Fairmount street, making a double
155 track line. This ordinance contained a provision and reservation, as respects fare, in similar terms to that of the ordinance of 1879. Under this ordinance of 1883, the company agreed to carry passengers over its line as far east as the city limits for five cents. It did not make any agreement to run through cars, and for the next three years it did in fact only run a portion of its cars through. It was under no obligation to give transfers at Willson avenue, and was in fact not giving such transfers.

It is alleged in the bill, and in proof by affidavit, that this arrangement and operation of the cars was unsatisfactory, both to the company and to its patrons, and, in March, 1886, (see Revised Ordinances, p. 826,) the council passed an ordinance entitled: "An "ordinance granting to the East Cleveland Railroad Company the "right to extend and operate its double track street railroad in Eu-"clid avenue between the easterly line of Fairmount street and the "easterly limits of the city." By section 3 of this ordinance, the company was required to pave fourteen feet, an obligation which did not pertain to its then existing contract with the city; and, by section 4 of the ordinance, the following provision is made, as respects the rate of fare to be charged by the East Cleveland Company

over its entire line, which included the line referred to in the ordinances of 1879, and 1883:

"The rights as herein granted and conferred are upon the express condition, however, that said company shall charge and collect but one fare of not more than five cents for each passenger one way in either direction, between the easterly limits of the said city on Euclid avenue and the Westerly terminus of said company's tracks at the intersection of Superior and Water streets; and upon the further condition that the said company shall run through cars over said line between said points last named in each direction as the public convenience and the opinion of the common council, by resolution expressed, may require."

Section 5 of this same ordinance provides:

"The rights herein granted to lay and operate a double track street railroad on Euclid avenue between Fairmount street and the easterly limits of the city, shall cease and determine on the
156 20th day of September, A. D. 1904, as provided for by said company's tracks on Euclid avenue west of Fairmount street."

It is apparent from an inspection of this ordinance of 1886, in connection with the admitted circumstances surrounding its passage, that the council was then fixing and agreeing upon a rate of fare to be charged upon the entire line of the East Cleveland Railroad Company, and during the entire life of the franchise, which did not expire until 1904; and nowhere in this ordinance is contained any reservation in the city council to thereafter change the rate of fare therein prescribed. It also appears, in the making of this contract, that the city received additional consideration, namely: the obligation of the company to pave an additional space upon the street, and the requirement for the operation of through cars. In 1883, the reservation contained in the ordinance of 1879, had been repeated, in substance, in the ordinance of that date, but in 1886, the council, for the first time, legislates or contracts upon the subject of fares to be charged in connection with the operation of through cars and a double track street railroad, and it entirely omits the reservation contained in the former ordinances.

This ordinance of 1886, was a contract, still in full force and effect. It, in express terms, prescribed the rate of fare which the company shall charge in the operation of its line upon Euclid avenue, and, in express terms, provides that the conditions and obligations of such ordinance shall remain in force until the year 1904; and it makes this obligation to so operate through cars and maintain a double track road, and to charge but five cents fare over the entire line, continue as long as, and terminate with, the ordinance of 1879; and this ordinance of 1879, so referred to, is the ordinance in which is contained the reservation upon which the city bases its contention as to the validity of the reduction of fare attempted to be made in October, 1898.

157 It is perfectly apparent that it could not have been in the minds of the parties contracting that the reservation of the right to regulate fare in the ordinance of 1879, could be operative after the express contract in relation to fare for the entire period of the grant, as made by the ordinance of 1886.

Again, the council, having in the ordinance of 1879, reserved the right to thereafter increase or diminish the rate of fare, did, in 1886, in the making of this contract, fix the rate of fare at five cents, to extend from the passage of the ordinance up to the expiration of the grant made in 1879; so that it may perhaps be fairly said that the ordinance of 1886, was an exercise of the reserved right of regulation contained in the ordinance of 1879. But, whether it be treated as an exercise of such right, or as the entering into of a new contract, it is plain that, after the passage and acceptance of the ordinance of 1886, there no longer remains in the city council a right to increase or diminish the rate of fare to be charged upon that line until the expiration of the grant of 1886, to-wit: the year 1904.

Again, in 1888, an ordinance was passed granting the East Cleveland Railroad Company the right to construct and operate its road by electricity on Euclid and Cedar avenues. In this ordinance, it is recited:

"Whereas, there is a desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit, and that an electric system be substituted for animal power for the movement of cars,

"Therefore, the East Cleveland Railroad Company is hereby granted permission, etc."

And, in section 6 of the ordinance, it is provided:—

"Nothing herein shall be so construed as to authorize any increase of present fare for transportation over any portion of said company's line."

It appears in evidence that the company, having accepted this ordinance, at the expense of a very large amount of money,
158 changed its construction as contemplated, and continued, after electricity was put in, to operate without any increase of fare. It is apparent that the "present fare" referred to in the ordinance of 1888, must have had reference to the fare which the company was then charging, and as fixed in the ordinance of 1886, namely, a cash fare of five cents. In consideration of the company's so equipping its line with electricity, and so agreeing to carry at "present fare," this same ordinance granted an extension of franchise for twenty-five years from July 13, 1888. By virtue of this ordinance, read in connection with the ordinance of 1886, the company acquired thereby the right to operate its line for a period of twenty-five years from that date, at the then present rate of fare referred to in the ordinance, namely, a cash fare of five cents.

In 1889, an ordinance was passed, granting the East Cleveland Railroad Company the right to construct what is known as the

Wade Park Avenue line, and, by section 4 of this ordinance, it is provided:

"Permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line or said extension, and but one fare, not exceeding five cents, or one of said company's tickets, shall entitle a passenger to transportation over the main line and extension, from the intersection of Lake and Water streets to the easterly limits of the city, or from the easterly limits of the city to the intersection of Lake and Water streets."

This provision as to fare covers a portion of the Euclid Avenue line, with respect to which it is claimed by the city that a reserved right exists to regulate fares under the ordinance of 1879, but the council, as in the ordinance of 1886, specifies the fare to be five cents, and, upon this Wade Park Avenue line, from Superior and Water streets to Case avenue, there could be no longer any right to reduce fare, as the extension is made upon the condition that the company will thereafter carry over the entire Wade Park Avenue line
159 at a cash fare of five cents, or a railroad company's ticket.

Prior to June 1, 1893, the Broadway & Newburgh Street Railroad Company, the Brookland Street Railroad Company and the South Side Street Railroad Company were corporations operating independent lines of railway in the city of Cleveland, each of them operating under contracts or grants from the city, and charging, as authorized in the ordinances permitting their operation, a cash fare of five cents. As to no one of these companies was there any right remaining in the city council to increase or diminish the rate of fare during the period of the several grants.

These companies, about June 1, 1893, consolidated with the East Cleveland Railroad Company, forming the complainant, The Cleveland Electric Railway Company. The city council consented to the terms of such consolidation under the following terms and conditions:—

"Only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by said constituent companies, and any line of any other of the said constituent companies within the limits of the city of Cleveland, and passengers on any of such lines, paying one fare, shall be entitled, without additional or extra charge, to be transferred to any other of said lines, and have a continuous ride thereon, for said single fare."

But it is evident that the one fare here mentioned must have reference to the present fare then charged by the constituent companies, namely, a fare of five cents. It thus appears that, by virtue of the ordinance of 1886, the East Cleveland Railroad Company was authorized to operate its line and cars to the end of its term at a cash fare of five cents; that each of the constituent companies which formed the present complainant, The Cleveland Electric Railway Company, was also authorized, for a period of time which has not yet expired, to charge a cash fare of five cents; that these different

lines have been merged by consolidation, and that under the
160 consolidation, the system is being operated as an entirety.

The portion of the Euclid Avenue line to which the reservation of the ordinance of 1879, had reference, as an independent line, has long since ceased to be such, and the relations of the consolidated company, (the complainant,) and the city, under these various grants, are so fixed as that, to admit the reserved power of regulation in the ordinance of 1879, to be now operative would be to impair the obligations of the several subsequent contracts in which the rate of fare is definitely fixed without reservation.

Also, as pointed out in the discussion of the question as to the other complainant, as a matter of practical railroad operation, it is difficult to see how the conferred rights of the parties could be worked out if effect is given to the alleged reserved power in the ordinance of 1879.

It is contended by counsel for the city that certain of the provisions as to rates of fare, claimed to constitute a new contract since the passage of the ordinance of 1879, are invalid, because in violation of section 2502 of the Revised Statutes, providing that, after a grant or renewal of a grant is made, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal.

It is questionable whether the right reserved to the city council to thereafter increase or diminish fare can fairly be said to be either an obligation or liability of the railroad company within the meaning of this prohibition of the statutes; but, expressing no opinion on that subject, it is not true that the provisions of the section prohibit the city, after making an agreement or grant or renewal of a grant containing sundry provisions as to the rates of fare, from thereafter, upon sufficient consideration, modifying such contract.

This has been expressly held in the case of Clement *v.*
161 Cincinnati, 16 Western Law Bulletin, 355, and affirmed by the supreme court of the State in 19 Law Bulletin, 74. The court there held:

"The modification of a contract between the city and the owner of a street railroad route, made in good faith for the better accommodation of the public, is not void by virtue of section 2502 of the Revised Statutes, and the release of the grantee of such route from an obligation, although in consideration of, more rapid transit, involving greater expense and higher rate of fare, is permitted."

See also, Woodson *v.* Murdock, 22 Wall. 351; City of Cincinnati *v.* Cincinnati St. Ry. Co., 31 Weekly Law Bulletin, 308; City of Cincinnati *v.* Cincinnati St. Ry. Co., 2 *Nisi Prius* Reports, 298; also State, *ex rel.* Hadden, *v.* East Cleveland R. R. Co., 6 Circuit Court Reports, 318, affirmed by Supreme Court, 27 Bul. 64.

For nearly twenty years, as the result of municipal legislation, sometimes hostile, sometimes friendly, the rights and privileges of the public and the different street railroad companies of this city

have been gradually moulded into a well defined code of street railway laws, every step of which has been stubbornly contended for by the respective parties to these suits. Conceding to each party all the rights and privileges won by this agitation, the court is convinced, after a thorough and painstaking investigation of all the ordinances, grants and evidence, that the complainants are entitled to the relief for which they pray in their bills of complaint, granting them a temporary injunction.

The court thinks it must be clear to every fair minded person, from the findings of facts filed with this opinion, that, to permit the ordinances of October, 1898, to be put into operation by the municipal authorities would clearly impair the present contract rights of the complainants, for which no adequate remedy exists at law.

The second contention of the complainants is that the ordinances in question prescribe a rate of fare so unreasonably low as to
162 deprive the complainants of their property without due process of law. In support of this contention, a large volume of testimony, in the shape of affidavits, has been filed by the defendant and the complainants. On the part of the complainants, these affidavits are offered to establish their contention that, taking into consideration the value of their railway systems, cost of construction, maintenance and operation, they could not carry passengers at the reduced rate proposed without loss, and that this loss would be so great as that, in time, it would deprive them of their property without due process of law. The court has examined these affidavits sufficiently to see that it would involve a laborious and expert accounting to decide this contention; and, having reached a conclusion on the first contention of the complainants, that the ordinances are invalid for the reasons hereinbefore stated, it is not necessary for the purposes of this motion, to make any further examination of that claim.

It is, however, due the complainants to say that their testimony makes out a "*prima facie*" case, within the ruling announced in Smythe *v.* Ames, where the Supreme Court held:—

"A State enactment, or regulation made under the authority of a State enactment, establishing a rate for the transportation of persons or property by a railroad, that will not admit of the carrier earning such compensation as, under all the circumstances, is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment to the Constitution of the United States."

A preliminary injunction will issue, to remain in force until the final hearing of the cause, or until the further order of the court. Counsel will proceed to take their testimony for the final hearing, and the ninety days allowed by equity rule 69 will be apportioned between the parties.

163 Endorsements on opinion of the court: 5839–5840 United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company *vs.* The City of Cleveland. The Cleveland Electric Railway Company *vs.* The City of Cleveland. Opinion of the court. Filed May 16, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O.

164 In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } # 5839. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } # 5840. Equity.

Finding of Facts.

The complainants have instituted this suit to seek relief through a decree declaring void certain ordinances passed by the city of Cleveland in October, 1898, known as "low fare ordinances." By the provisions of these two ordinances, the city undertakes to compel each of the two complainants to carry passengers over certain designated portions of the routes operated by them at a cash fare of four cents, and to sell tickets good for one passage at the rate of seven tickets for twenty-five cents. Each of the complainants, in its bill of complaint, contends that the ordinances so requiring a reduction of fare are laws of the State of Ohio, and in impairment of their contract rights, and that the rate of fare sought to be established is so unreasonably low that, if put into practical operation, it would amount to the taking of the complainants' property without due process of law.

Upon the filing of the bills, temporary restraining orders were issued, restraining the defendant from putting these ordinances into operation; and, subsequently, the cases were heard by the
165 court upon an application, in each case, for a temporary injunction, and the cases have been fully and elaborately argued by the respective counsel, both orally and by brief.

As respects the Cleveland City Railway Company, the ordinance, the operation of which it is sought to enjoin, requires the company to operate what is known as the Kinsman Street line at the rate of fares therein prescribed; and, as to the Cleveland Electric Railway Company, the ordinance in question is made applicable to that which is known as the Euclid Avenue line, and all extensions thereof. Both of the companies, complainants herein, are operating under various ordinances passed in the common council of the city

of Cleveland, prescribing the terms and conditions upon which the various railroad routes may be operated for stated periods of time. Both of the complainant companies, at the date of the passage of the ordinance in question, were operating under such grants from the city, none of which had expired.

A brief statement of the corporate history of each of these complainants, and of the various ordinances under which they were operating their lines of railway, is necessary to understand the precise question involved in this motion.

The complainant, The Cleveland City Railway Company, is a corporation duly organized under the laws of the State of Ohio, having a capital stock of $8,000,000, of which $7,600,000 have been issued, and a bonded indebtedness, secured by mortgage upon a portion of its railroad, of $2,026,000, payable in eleven years, with 5% interest, payable semi-annually. This company was formed by the consolidation of two existing railway companies in the city of Cleveland, each of which owned and was operating lines of street railway under ordinances passed by the municipality, and, by the terms of such consolidation, and by the statutes of Ohio, became possessed of the rights, franchises and privileges theretofore possessed by each
166 of the constituent companies. The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company were the constituent companies entering into such consolidation.

The said The Woodland Avenue & West Side Street Railroad Company, one of the constituent companies forming such complainant, was organized in 1885, and was a consolidated company formed by the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company; and the said The Woodland Avenue Railway Company, which was consolidated, was the successor, by purchase, of the Kinsman Street Railroad Company, having become such about the year 1880. By the terms of the consolidation, in 1885, of the said The Woodland Avenue Railway Company and The West Side Street Railroad Company, said consolidated company, known as the Woodland Avenue & West Side Street Railroad Company, became vested with all the rights and privileges of each of said constituent companies.

The Cleveland City Cable Railway Company was the successor and owner, by purchase, of all of the property and franchises of the St. Clair Street Railroad Company and the Superior Street Railroad Company, each of which companies was a corporation under the laws of the State of Ohio, owning and operating lines of street railway in the city of Cleveland under grants from the city.

By virtue of the consolidation of the Woodland Avenue & West Side Street Railroad Company and the said The Cleveland City Cable Railway Company, in 1893, the complainant company, The Cleveland City Railway Company, became vested with all of the rights, privileges and franchises of the said constituent companies above mentioned.

In 1885, when the Woodland Avenue & West Side Street Railroad Company was organized, the constituent companies before such consolidation were independent lines of railway, one
167 operating chiefly upon the west side of the Cuyahoga river, and the other upon the east side, running to the northeasterly portion of the city. Each was acting under independent franchises and contracts with the city of Cleveland. There was no exchange of traffic by way of transfer, and each company was charging a fare of five cents over its line. At the time of this consolidation, the West Side Street Railroad Company had the right, by ordinance, to continue the operation of its road for twenty-five years from February, 1883, and to charge a cash fare of five cents for each passenger carried. The Woodland Avenue Railway Company was operating its line of road under several grants from the city; among others, a grant made in 1879, relating to the operation of cars from Water street, through Superior and Ontario streets and Woodland avenue, to Madison avenue. This grant provided, among other things, that the company should not charge more than five cents cash fare, and in said ordinance was reserved the right to the municipal council to thereafter increase or diminish the rate of fare as it might deem wise and expedient; this being the ordinance known as the Kinsman Street ordinance, and under which the defendant claims the right to put into operation the ordinance reducing the fare, set up in the complainant's bill.

In 1883, another ordinance was passed, granting the Woodland Avenue Railway Company the right to extend and construct its line of railway upon Woodland avenue from the crossing of the Cleveland & Pittsburgh Railroad Company's tracks to Corwin street, and, in this ordinance, provision was made for the operation of cars over the entire line, including the line referred to in the ordinance of 1879; and the company agreed that, during the continuance of said grant, it would charge but one fare of five cents over its entire line, including said extension.

In 1885, upon the consolidation forming the Woodland
168 Avenue & West Side Street Railroad Company, the city council passed an ordinance entitled "An ordinance to fix the "terms and conditions upon which the railway tracks of the West "Side Street Railroad Company and the tracks of the Woodland "Avenue Railway Company and said companies may be consoli-"dated;" and in and by the said ordinance it is provided that "the said consolidated company to carry passengers through without change of cars, by the running of cars through from the workhouse, on the line of the Woodland Avenue Railway Company, to the point on the West Side Street railroad where Gordon avenue crosses Lorain street, and, when practicable, in the judgment of the council, to do likewise on the branches of the consolidated lines, and that for a single fare from any point to any point on the lines or branches of the consolidated road no greater charge than five cents shall be collected, and that tickets at the rate of eleven for fifty

cents, or twenty-two for one dollar, shall at all times be kept for sale on the cars by the conductors."

This ordinance was duly accepted by the Woodland Avenue and West Side Street Railroad Company, and its successor, the complainant, has complied with the terms of said ordinance, which has not yet expired; and it also appears that the provision so fixing the rate of fare to be charged at five cents had reference to and included the operation of cars upon that portion of Woodland avenue referred to in the ordinance sought to be enjoined in the bill of complaint.

In April, 1887, the Woodland Avenue & West Side Street Railroad Company accepted an ordinance by the city of Cleveland relating to the construction of an additional track upon Franklin avenue, and in this ordinance it is provided that the grant made shall continue and terminate with the grant of the main line of said company on the 10th day of February, 1908, and that it is made upon the express condition that no increase of fare shall be charged by said railway company upon any part of its main line or on said extension, so that but one fare of not to exceed five cents shall be charged between any points on said company's main line or extensions, and that said company shall sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar. This ordinance
169 of 1887, is still in force, and part of the main line referred to, upon which it was so provided that a fare of not to exceed five cents should be charged is the line of railway formerly known as Kinsman street, and referred to in the ordinance the operation of which is sought to be enjoined herein.

In August, 1887, the city council passed an ordinance, which was duly accepted by the Woodland Avenue & West Side Street Railroad Company, relating to an extension of its tracks upon Waverly avenue, and this ordinance provided that no increase of fare should be charged by said company on any part of its main line, or on said extension; and that but one fare of not to exceed five cents should be charged between any points on said company's lines or extensions, and that said company should sell tickets on its cars as follows: Eleven tickets for fifty cents, or twenty-two tickets for one dollar. This grant is still in force, and the main line upon which the rate of fare is so prescribed includes the line of railway upon Woodland avenue, referred to in the ordinance of October 17, 1898, set forth in complainant's bill.

In 1892, the council passed an ordinance, duly accepted by the Woodland Avenue & West Side Street Railroad Company, relating to an additional track upon Kinsman street, which ordinance required large expenditures of money by way of paving and repairs of pavements, and in said ordinance it was provided that the grant is made upon the conditions that the company shall charge but one fare between any points on said company's main line and extensions, and sell tickets at the rate of eleven for fifty cents, or twenty-two for one dollar, all rights under the grant to terminate on the 10th day

of February, 1908. The main line referred to in this ordinance includes the Woodland Avenue line, in respect to which the council, by the ordinance of October 17, 1898, seeks to prescribe a lower rate of fare.

170 At appears from an inspection of the various ordinances that, in each instance where new rights were granted to the company, the city received as well new and valuable considerations by way of increased obligations in respect to paving, or the operation of through cars for the accommodation of the public, or the selling of tickets upon the cars.

Prior to May 13, 1883, the Cleveland City Cable Railway Company owned and operated lines of street railway upon Superior street by cable power, and lines upon St. Clair street by horse power; and the ordinance under which it was so operating authorized it, for a period of years which has not yet expired, to operate its lines, and upon each of them to charge a cash fare of not to exceed five cents. In May, 1893, at the time of the consolidation forming the Cleveland City Railway Company, the two companies entering into such consolidation addressed a communication to the city council notifying it of their agreement in that respect, and that, on June 1, 1893, it was proposed to operate the lines as an entire system, to issue proper transfers, so that a passenger on any line of the Woodland Avenue & West Side Street Railroad Company could be transferred to and have a continuous passage upon any line of the Cleveland City Cable Railway Company, and *vice versa;* that only one fare should be charged; and that it was proposed to also establish a cross-town line, and charge but one fare for a continuous ride upon any additional lines within the city of Cleveland. Upon the receipt of such communication, the common council, on May 10, 1893, passed a resolution approving the proposed consolidation upon the terms and conditions stated in such communication; and it appears that, since the first of June, 1893, The Cleveland City Railway Company, the complainant herein, has operated said various lines of street railway, charging a cash fare of five cents for each passenger, and selling tickets good for passage as required by said sev-

171 eral ordinances, and with the system of transfers contemplated in said council resolution, and in all respects complied with the conditions of the various ordinances under which it is operating its railway system.

Such being the relations established by ordinance between the city of Cleveland and the complainant, on the 17th day of October, 1898, the city council passed an ordinance entitled "An ordinance to "provide for a diminution of fare under an ordinance granting a "renewal of franchises, to the Kinsman Street Company, and to "reconstruct, maintain and operate its street railroad in and through "certain streets of the city of Cleveland." This ordinance, after reciting the reservation contained in said ordinance of 1879, providing "the council, however, reserves to itself the right to here-"after increase or diminish the rate of fare as it may deem justifiable

"and expedient," further recites that "the council now deems a "diminution of fare justifiable," and, by section 1 of the ordinance provides "that the rate of fare for a single continuous passage over "the lines and all extensions thereof operated under the aforesaid "grant to the Kinsman Street Railway Company be, and the same "is hereby, fixed at four cents, cash fare, over the whole or any part "thereof;" and, by section 2, the ordinance requires the company operating said line to keep on sale in its cars, when in operation, tickets good for a single continuous passage at the rate of seven tickets for twenty-five cents.

The contention of the Cleveland City Railway Company, and upon which it asks an injunction, is that the said ordinance of October 17, 1898, which so requires it to carry upon a portion of its line at a cash fare of four cents, and to sell tickets at the rate of seven for twenty-five cents, is in violation and contravention of the contract obligation existing between the said company and
172 the city of Cleveland, and impairs its contract rights in this: that whereas it is entitled, by virtue of the several ordinances hereinbefore set forth, to charge upon all of its said lines a cash fare of five cents, the provision of said ordinance requires it to accept a cash fare of four cents; and whereas it is entitled, as respects ticket fare, to sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar, this ordinance requires it to sell tickets at the rate of seven for twenty-five cents; and this, the complainant claims, would be an impairment, by law of the State of Ohio, of its contract rights growing out of said ordinance and its acceptance thereof.

It is also contended that the practical effect of the ordinance would be to reduce the rate of fare to four cents for a cash fare, and 3 4/7 cents for a ticket fare; that experience in the operation of street railways has shown that where there is such a difference in amount between tickets and cash fare, as a matter of convenience and economy, at least 70% of passengers use tickets, so that, if said ordinance be put into operation, the complainant contends it would be obliged to carry about 70% of its passengers at the rate of 3 4/7 cents, and that about 30% would pay the cash fare of four cents; whereby it claims that its gross receipts would be reduced more than one-fifth, while its operating expenses would remain the same, and that the practical operation of the ordinance would be to diminish its net receipts more than 50%, and, in its bill, the complainant gives a comparative statement of gross and net receipts for the year 1897, showing the number of passengers carried, the rate per passenger received under existing ordinances, and what its receipts would have been had the ordinance of October 17, 1898, been put in force upon its entire line; and, from this statement, it appears that its gross receipts would have been reduced $221,505.38, or something
173 more than 20%, and that the average rate of fare per passenger carried would have been 3.87 cents, and that, in order to have made the gross receipts equal to those under existing ordi-

nances, it would have been obliged to carry, in 1897, 5,736,590 more passengers than it did in fact carry.

It is further contended and set forth in the bill that, had the ordinance in question been in operation in 1897, over the entire line, the company would have suffered a loss in income of $221,505.38,—more than 52.5% of its net income; and, for the same period of time, and assuming that 70% of passengers carried would have used tickets, the loss to the company would have been $259,971.59,—more than 61% of its net income. And the complainant contends that the losses which it alleges would result are reached in the statements given without including anything for interest charges, depreciation, nothing for dividends or interest on capital stock, and nothing by way of sinking fund, which it is alleged should be allowed by reason of the shortness of the franchises of the company; and the complainant contends that said reduction of fare would deprive it of the reasonable profits which it is entitled to derive from its property, and constitute a taking of its property without due process of law, in contravention of the Constitution of the United States.

The complainant, The Cleveland Electric Railway Company, is a corporation duly organized under the laws of the State of Ohio, having a capital stock of $12,000,000, substantially all of which is issued, and a bonded indebtedness secured by mortgage upon its property, aggregating about $3,750,000, and a floating indebtedness of about $250,000.

This company was formed by the consolidation of four existing railway companies in the city of Cleveland, each of which owned and was operating lines of street railway under ordinances passed by the municipality; and, by the terms of such consolidation, and by the statutes of Ohio, became possessed of the rights,
174 franchises and privileges theretofore possessed by each of the constituent companies. The constituent companies entering into such consolidation were the East Cleveland Railroad Company, the Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company. The said The East Cleveland Railroad Company was a corporation which had been in existence, and operated lines of street railway in the city of Cleveland since about the year 1859, and at the time of said consolidation owned and was operating several lines of street railway in said city, namely, its Euclid Avenue line, extending from the business portion of the city on Bank street, through Superior street, Euclid avenue, Erie street, Prospect street, Case avenue and Euclid avenue to the city limits; its Garden Street line, its Cedar Avenue line, and its Wade Park Avenue line. That the aggregate mileage of the lines operated by said company was about forty miles, and each of said lines had been constructed, and was in operation, under grants from the city of Cleveland, and upon the faith of which the said company had so constructed its lines of railway, and in and by which said grants the city and said company,

as authorized by the statutes of Ohio, had agreed as to the terms and conditions and the period of time for the operation by said company of its said lines of street railway.

That prior to September 15, 1879, the East Cleveland Railroad Company was operating its main line of railway from the intersection of Superior and Water streets to the easterly limits of the city on Euclid avenue, under various separate grants, some from the city council, some granted by the county commissioners before the territory affected thereby became a part of the city of Cleveland, and still other grants from the authorities of the former village of East Cleveland; and the contract rights of the company for the operation of its road easterly of Willson avenue contained few restric-
175 tions, and none respecting the rates of fare to be charged, and extended for a period of nearly twenty years; and at that time, east of Willson avenue upon Euclid avenue there was but a single track, and under contracts and agreements then in force between the company and the public authorities, it had the right to charge passengers one fare from Water street to Willson avenue, another fare from Willson avenue to Fairmount street, and still another fare from Fairmount street to the city limits; and it was, in fact, at that time, charging passengers two fares between Water and Superior streets and the city limits. That, in this situation, the said The East Cleveland Railroad Company and the city entered into a new contract, providing for the renewal of the grant to the said The East Cleveland Railroad Company for the construction, maintenance and operation of a double track street railway over a portion of the line then operated by said company from Superior and Water streets, through Superior street, around the public square to Euclid avenue; through said avenue to Erie street; thence to Prospect street; thence to Case avenue; thence to Euclid avenue, and along said Euclid avenue to Willson avenue; and said ordinance imposed new conditions as respects paving to be done by said company, removal of snow and ice from the tracks, and other similar provisions; and in and by section 6 of said ordinance it was provided that said company should not charge more than five cents each way for a passenger over the whole or any part of the line therein renewed; that said company might charge a reasonable compensation for carrying packages, and that the council reserved to itself the right to thereafter increase or diminish the rate of fare, as it might deem justifiable or expedient; and under and by the terms of said ordinance, which was to remain in force for the period of twenty-five years from the 20th day of September, 1879, the said company reconstructed its tracks between Su-
176 perior and Water streets and Willson avenue, as aforesaid, and thereafter, up to April, 1883, charged, as it was permitted to do by said ordinance, one fare of five cents between Superior and Water streets and Willson avenue, and an additional fare of five cents from Willson avenue eastwardly to the end of its line. That about April 4, 1883, said company entered into a new contract

with said city, by ordinance duly passed and accepted by the company, by which, upon certain terms and conditions, it was granted the right to extend and to build an additional track, and operate a double track line upon Euclid avenue from Willson avenue to Fairmount street; and in said ordinance and grant said company agreed that it would charge but one fare of not more than five cents between the westerly terminus of the company's road upon Superior street and the easterly terminus of its line, and that the rights granted should expire on the twentieth day of September, 1904; and in and by said contract it was provided that the council reserved to itself the right to thereafter increase or diminish the rate of fare between the westerly end of said company's line on Superior street and the city limits, as it might deem justifiable and expedient.

That upon the making of the last mentioned contract, the relations between the city and the East Cleveland Railroad Company were so far changed that the company agreed to carry passengers over its lines as far easterly as the city limits for five cents for each passenger, but it had not agreed, and was under no obligation, to run all its cars through, and was, in fact, operating only a portion of its cars as through cars, and was under no obligation to and was not transferring passengers who desired to go east of Willson avenue who had taken passage upon a car which did not go beyond that point; that such arrangement and operation were unsatisfactory, both to the city and to the company, and, in March, 1886, a new contract
177 was entered into between the city and the railroad company, by ordinance duly passed and accepted by the railroad company, whereby it became obligated to construct and operate a double track railroad in Euclid avenue between the easterly line of Fairmount street and the easterly limits of the city, such territory having theretofore been occupied by a single track, thereby making its entire Euclid Avenue line a double track street railroad; and in said ordinance it also agreed to pave between the rails of each track, together with the spaces between the rails, and to keep certain portions of the pavement in good repair; each and all of which obligations were in addition to those existing under former contracts between the railroad company and the city. And the complainant claims that, in and by said ordinance, an entirely new contract and agreement, superseding all contracts prior thereto, was made with the city by the said railroad company with respect to the rates of fare which it should charge over its said line so to be made into a double track through line from Superior and Water streets to the easterly limits of the city upon Euclid avenue, the agreement between the city and the railroad company with respect to the fare thereafter to be charged being as follows: That said company should operate the whole of said track as a through line, with through cars, and should charge and collect but one fare of not more than five cents for each passenger one way in either direction, between the easterly limits of the city on Euclid avenue and the westerly terminus of said company's tracks at the intersection of Superior and

Water streets; and that the company should run through cars over said line between the points last named in either direction, as the public convenience, in the opinion of the common council, by resolution expressed, should require; and that the contract so made should be in force until the 20th day of September, 1904, which contract, having been so duly expressed
178 by ordinance and accepted by said The East Cleveland Railroad Company, the complainant, The Cleveland Electric Railway Company, claims became a valid contract between the said The East Cleveland Railroad Company and the city of Cleveland, by which said company agreed, in consideration of the grants therein made to it, to make the necessary expenditures contemplated in said ordinance with respect to the reconstruction of its tracks, and assumed and agreed to perform additional obligations in respect to paving, and agreed that it would operate said road in accordance with the terms of said ordinance until the 20th day of September, 1904; and that, during such time, it would carry passengers at the rate of fare so fixed in said ordinance, to-wit: five cents for each passenger one way, in either direction, over said entire line, and in pursuance of said contract, and in reliance thereon, the said company proceeded to in all respects comply with the conditions of said ordinance, and began the operation of a through line of cars in accordance with the terms thereof, and said company, and said complainant, its successors, have ever since said time fully complied with the terms and conditions of said last mentioned ordinance, and are now complying therewith, although said company thereafter voluntarily began the sale of tickets good for passage at a less rate than it was authorized to charge in said ordinance, towit: at the rate of eleven tickets for fifty cents.

That, prior to July, 1888, the line of railway of the said East Cleveland Railroad Company had been operated by horse power; that, at that date, such progress had been made in perfecting the system of propelling cars by electric motors, that the company was willing to incur the necessary expense of equipping certain of its lines with electricity, and thereupon the said company and said city entered into a still further contract by ordinance, duly passed
179 and accepted, providing for the equipment and operation of said company's Euclid Avenue and Cedar Avenue lines by electricity, and in said ordinance and contract it was provided that the privilege of constructing the electric system and the operation of said lines thereby was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure the same, and that the right to operate said line after the expenditure of said large sum of money so necessary for its equipment should be and remain in force for the period of twenty-five years from and after the passage of said ordinance both upon the main line and what is known as the Cedar Avenue line of said company, and provided that nothing in the ordinance should be construed to authorize any increase of present fare for transportation

over any part of said company's lines; and your orator shows and alleges that, at the time of the passage of said ordinance, and its acceptance by said company, the rate of fare therein referred to, which was not to be increased, was, as hereinbefore set forth, five cents for each and every passenger carried in either direction over said lines, and it was in terms provided in said ordinance that its acceptance should be deemed an agreement with the said company by which it agreed to perform all and singular the matters and things therein agreed by it to be performed. The council were also given permission in and by said contract to require the company thereafter to equip the entire length of its main line and Cedar Avenue line with electricity; and thereafter, in reliance upon its said contract, and the performance thereof by the city, said company proceeded, at the expense of many hundred- of thousands of dollars, to equip its said lines with electricity in pursuance of the terms of said ordinance.

That thereafter the said The East Cleveland Railroad Company entered into another contract with the city of Cleveland, by
180 ordinance passed and accepted, by which it was given authority to construct and operate the lines known as the Wade Park Avenue line, the company agreeing, in consideration thereof, to do certain additional paving, and to submit to various other requirements as in said ordinance expressed, and with respect to the rate of fare to be charged by said company, said ordinance and contract provided that no increase of fare should be charged by said company on any part of its main line or said extension, and that one fare, not to exceed five cents, or one of said company's tickets, should entitle a passenger to transportation over the main line and extension, from the intersection of Lake and Water streets to the easterly limits of the city. That, in compliance with the terms of said ordinance and contract, said East Cleveland Company constructed and placed in operation the said Wade Park Avenue line at great expense, and, since said time, said line has been operated at the rates of fare therein fixed, and, in all respects, the conditions of said ordinance complied with.

That prior to May, 1893, the said the East Cleveland Railroad Company, the Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company, wore engaged in the operation of their respective lines of road in various and different parts of the city, and as authorized in various contract grants under which they had constructed their said lines of railway and were operating the same, each and all of said constituent companies were charging a cash fare of five cents, and that their right so to do was fixed by the terms of their respective contracts and agreements with the city, and complainant alleges that there was not, at any time, as respects any one of said constituent companies, power in the common council of the city to in any manner compel said companies, or any one of them, during the existence of their respective grants, to reduce the
181 cash fare to be charged by the said companies, or either one of them, below a cash fare of five cents.

That each of said constituent companies operated its line as an independent line; that no system of transfers, (except between the South Side and Brooklyn lines,) from the line of one of the said roads to the lines of the others was in force, so that a passenger, having occasion to use more than one of said lines, was obliged to pay two fares of five cents each, and that each and all of the grants under which said companies were so operating under the rights aforesaid prior to the 29th day of May, 1893, are still in force and effect.

That about April 11, 1893, the said constituent companies entered into an agreement of consolidation, in conformity with the statutes of Ohio, and formed and organized the complainant, The Cleveland Electric Railway Company, as a consolidated company, by virtue of which consolidation the complainant, The Cleveland Electric Railway Company, at once became possessed of and vested with all and singular the property, rights, franchises and privileges of each and all of said constituent companies, and such consolidation being effected, and complainants intending to operate said lines as one entire system, and to give to the public in the city, the privilege of riding over said system by a continuous passage for one fare, the complainant applied to the common council of the city of Cleveland for its consent and approval of the terms of said consolidation, so far as they related to the maintenance and operation of said various lines and rates of fare which should be charged by said complainant, and, upon May 29, 1893, said city council duly adopted a resolution consenting to said consolidation, and providing, among other things, as follows:

"That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said con-
182 stituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any such lines paying one fare shall be entitled, without additional or extra charge, to be transferred to any other of said lines, and having one continuous ride thereon for said single fare."

Said resolution further provided that the Cleveland Electric Railway Company should file with the city clerk a written acceptance of the terms of said resolution within ten days from the time of its adoption, which written acceptance was duly filed, as required by the terms of said resolution, on the date of its passage,—May 29, 1893; and the complainant has, ever since the adoption of said resolution, continued to operate said various lines of railway, and to charge only the same cash fare of five cents for each passenger, in strict compliance with each of the different contracts which each of said constituent companies had with the city, and which are still in full force. And the complainant, The Cleveland Electric Railway Company, adopted and put in force the system of transfers contemplated in said council resolutions, and has, although not required so to do, by the grants and contracts of the East Cleveland

Railroad Company, kept on sale, and accepted for passage, tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar. That no one of the grants or contracts aforesaid under which said constituent companies which formed the complainant were authorized to operate their various lines of street railway and to charge a cash fare of five cents for each passenger carried thereon, has expired, but all of said grants are in full force and effect.

That, in December, 1893, the complainant duly accepted an ordinance of the city authorizing it to extend its double track railway on Prospect street from Erie street to Ontario street, in which ordinance it was provided that the complainant, with respect to all lines of railway which it was operating, should comply with the terms and conditions of said resolution of the city council,
183 passed May 29, 1893, approving said terms of consolidation, and that it should, upon each of said lines, comply with the conditions of said last mentioned ordinance; that said grant so made has not yet expired, and that no one of the grants under which complainant is operating its lines of street railway expire before the year 1910.

Such being the relations established by ordinance between the city of Cleveland and the complainant, The Cleveland Electric Railway Company, on the 17th day of October, 1898, the city council passed an ordinance entitled "An ordinance to provide for diminution of "the rate of fare under section 6 of an ordinance passed September "15, 1879, entitled, 'An ordinance granting a renewal of franchise to "the East Cleveland Railroad Company to reconstruct, maintain and "operate its railroad in and through certain streets of the city of "Cleveland.'" This ordinance, after reciting the reservation contained in said ordinance of 1879, providing "The council, however, "reserves to itself the right to hereafter increase or diminish the rate "of fare as it may deem justifiable and expedient," further recites that the "council does not deem it justifiable and expedient to diminish the rate of fare," and, by section 1 of the ordinance, provides: "That the rate of fare for a single continuous passage over the lines "and all extensions thereof operated under the aforesaid grant to "the said East Cleveland Railroad Company be, and is hereby, fixed "at four cents cash fare over the whole or any part thereof;" and, by section 2, the ordinance requires the company operating such line to keep on sale on its cars, when in operation, tickets good for a single continuous passage at the rate of seven tickets for twenty-five cents.

The complainant, The Cleveland Electric Railway Company, makes substantially the same contention with respect to said ordinance last mentioned being in contravention of its contract obligations with the city of Cleveland with respect to cash fares and
184 ticket fares as provided therein, and impairment of contract rights, and also with respect to the practical effect of the ordinance if put in operation, as to diminishing receipts, etc., as claimed by the complainant, The Cleveland City Railway Company, herein

before referred to, except as to the comparative statement of gross receipts given in the bill of the Cleveland Electric Railway Company for the years 1896 and 1897, from which it appears that its gross receipts would have been reduced, in 1897, $334,890.67, or something more than 20%, and that the average rate of fare per passenger would have been 3.80 cents, and that, in order to have made the gross receipts equal to those under existing ordinances, it would have been obliged to carry, in 1897, 3,812,912 more passengers than it did in fact carry.

It further contends and set forth in its bill that, had the ordinance in question been in operation in 1897, over the entire line, the company would have suffered a loss of income of $380,346.18,—more than 64% of its net income,—and the complainant contends that the losses which it alleges would result are reached in the statements given without including anything for interest charges, depreciation, nothing for dividends or interest on the capital stock, and nothing by way of sinking fund, which it alleges should be allowed by reason of the shortness of the franchises of the company; and the complainant contends that said reduction of fare would deprive it of the reasonable profits which it is entitled to derive from its property, and constitute a taking of its property without due process of law, in contravention of the Constitution of the United States.

AUGUSTUS J. RICKS,
U. S. Judge, &c.

185 Endorsements on finding of facts: 5839–5840. United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company *vs.* The City of Cleveland. The Cleveland Electric Railway Company *vs.* The City of Cleveland. Finding of facts. Filed May 16, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O.

186 *Order Granting Preliminary Injunction.*

April Term, A. D. 1899, to-wit, May 22nd, 1899.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RAILWAY COMPANY *vs.* THE CITY OF CLEVELAND. } No. 5839. In Equity. Order of Injunction.

Upon motion of complainant, the affidavits of the respective parties and arguments of counsel, the motion of complainant for a temporary injunction, as prayed for in the bill of complaint, is granted; and, until the further order of the court, it is ordered that the City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys and employees, representatives

and departments of said city and their respective agents, representatives and employees, and the director of law of said city and his associates and assistants and agents, and their respective successors in office, be enjoined, restrained and prohibited from putting into effect the ordinance in the bill of complaint described, to-wit: an ordinance entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, and from instituting or authorizing or directing any suit or suits, action or actions, or any proceedings against the complainant or any conductor or employee, or any officer, representative or agent of the complainant, the object or purpose of, or relief sought by, said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel the complainant or any officer, representative, conductor or agent of the complainant, to accept the cash fare provided for in said ordi-
187 nance, or to accept tickets as therein provided; and from making any complaint for violation of said ordinance or any part thereof; and from instituting or prosecuting any action or proceeding for violation of said ordinance or any part thereof; and from instituting, directing, authorizing or asking leave to institute or proceed with any suit, act or proceeding for the recovery of any fine, penalty or forfeiture for violating said alleged ordinance or any part thereof; and from bringing any suit, action or proceeding for the purpose of vacating the charter or annulling the existence of the complainant as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof or any of its provisions.

And it is further ordered and decreed that, until the further order of the court, said alleged ordinance of October 17th, 1898, in the bill of complaint described, shall not be binding upon or operative against said complainant.

Certified Copy of Order to Marshal for Service.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the 4th day of said month, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third, to-wit: on Monday, the 22nd day of May, A. D. 1899,

Present: The Honorable Augustus J. Ricks, U. S. district judge.

Among the proceedings then and there had, were the following, to-wit:

188 THE CLEVELAND CITY RAILWAY Company *vs.* THE CITY OF CLEVELAND. } #5839. In Equity. Order of Injunction.

Upon motion of complainant, the affidavits of the respective parties, and arguments of counsel, the motion of complainant for a temporary injunction, as prayed for in the bill of complaint, is granted; and, until the further order of the court, it is ordered that the City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys, and employees, representatives, and departments of said city and their respective agents, representatives and employees, and the director of law of said city and his associates and assistants and agents, and their respective successors in office, be enjoined, restrained and prohibited from putting into effect the ordinance in the bill of complaint described, to-wit, an ordinance entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898; and from instituting or authorizing or directing any suit or suits, action or actions or any proceedings against the complainant or any conductor or employee, or any officer, representative or agent of the complainant, the object or purpose of, or relief sought by, said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel the complainant or any officer, representative, conductor, or agent of the complainant to accept the cash fare provided for in said ordinance, or to accept tickets as therein provided; and from making any complaint for violation of said ordinance or any part thereof; and from instituting or prosecuting any action or proceeding for violation of said ordi-
189 nance or any part thereof; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any fine, penalty or forfeiture for violating said alleged ordinance or any part thereof; and from bringing any suit, action or proceeding for the purpose of vacating the charter or annulling the existence of the complainant as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof or any of its provisions.

And it is further ordered and decreed that, until the further order of the court, said alleged ordinance of October 17th, 1898, in the bill of complaint described, shall not be binding upon or operative against said complainant.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States, within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order of preliminary injunction entered upon the journal of the proceedings of said court, in the therein entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness, my official signature and the seal of said court, at Cleveland, in said district, this 27th day of May, A. D. 1899, and in the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
[SEAL.] By JNO. VAN NOSTRAN,
Deputy Clerk.

190 Endorsements on order, when issued: No. 5839. United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company *vs.* The City of Cleveland. Certified copy of order of injunction.

Endorsements on order, when returned:

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

Received this writ on the 29th day of May, 1899, and on the same day, I served the same at Cleveland, on the within named The City of Cleveland, by delivering a true and certified copy thereof to T. H. Hogsett, director of law and acting mayor of said city of Cleveland, the mayor of said municipal corporation not found in my district.

M. A. SMALLEY,
U. S. Marshal,
By H. R. YOUNG, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Filed May 31, 1899.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

191 *Petition for Appeal.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. In Equity. Petition on Appeal.

The above named defendant, conceiving itself aggrieved by the interlocutory order and decree granting a temporary injunction, made and entered on the 22nd day of May, 1899, in the above entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the sixth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the sixth circuit.

T. H. HOGSETT,
BEACOMB, EXCELL AND GAGE,
Attorneys for Defendant.

Dated June 13th, 1899.

Endorsements on petition for appeal: No. 5839. United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company, complainant, *vs.* The City of
192 Cleveland, defendant. Petition for appeal. File. W. H. T. Filed Jun- 13, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell & Gage, attorneys for defendant.

Assignment of Errors.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. In Equity. Assignment of Error on Appeal.

And now on the 13th day of June, 1899, came the said defendant, by T. H. Hogsett, Beacom, Excell and Gage, city solicitors and says that the interlocutory order and decree granting an injunction in

said cause is erroneous and against the just rights of said defendant for the following reasons:

First. Because the pleadings and evidence fail to show that to permit the said ordinance of the city of Cleveland passed October 17, 1898, which said ordinance complainant asks to have declared void, to be put into operation would impair the present contract rights of the complainant.

Second. Because said pleadings and evidence fail to show that said ordinance of October 17, 1898, is in conflict with the pro-
193 visions of the Constitution of the United States or any amendment thereto, in that it impairs the obligations of existing contract rights of complainant.

Third. Because said pleadings and evidence fail to show that said ordinance of October 17, 1898, is in conflict with section 10 of article 1, of the Constitution of the United States.

Fourth. That said pleadings and evidence fail to show that the enforcement of said ordinance of October 17, 1898, would constitute a taking of property without due process of law.

Fifth. Because said pleadings and evidence fail to show that the enforcement of said ordinance of October 17, 1898, would deprive complainant of its property without due process of law, or deny to complainant the equal protection of the law.

Sixth. Because said pleadings and evidence fail to show that the rate of fare prescribed by said ordinance of October 17, 1898, is so unreasonably low as to deprive complainant of its property without due process of law, or to deny to complainant the equal protection of the law.

Seventh. Because said pleadings and evidence fail to show that the ordinance in question is in contravention or violation of section one of article 14 of the amendments to the Constitution of the United States.

Wherefore, this defendant prays that the said order and decree may be reversed, and for all proper relief.

T. H. HOGSETT,
BEACOMB, EXCELL AND GAGE,
Attorneys for Defendant.

194 Endorsements on assignment of errors: No. 5830. U. S. circuit court. The Cleveland City Ry. Co., complainant, *vs.* The City of Cleveland, defendant. Assignment of error on appeal. File W. H. T. Filed Jun- 13, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell and Gage, attorneys for the City of Cleveland.

Order Allowing Appeal.

April Term, A. D. 1899, to-wit, June 13th, 1899.

Present: The Honorable William H. Taft, U. S. circuit judge.

195 THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } Chancery.

The respondent, The City of Cleveland, a municipal corporation, considering itself aggrieved by the order and decree herein entered on the 22nd day of May, A. D. 1899, comes now and presents to the court its petition for the allowance of an appeal to the United States circuit court of appeals for the sixth circuit, together with an assignment of errors, asserted and intended to be urged in that behalf.

On consideration whereof, the court orders that, on a bond, as provided by law, to be approved by the clerk of this court, being executed and filed in the sum of two hundred and fifty dollars the said appeal is allowed, and it is ordered that a transcript of the record, proceedings and papers upon which the decree of this court was rendered in this cause, duly authenticated, be sent to the United States circuit court of appeals, according to law in such case provided.

196 *Undertaking for Appeal.*

Know all men by these presents, that we, The City of Cleveland, by John H. Farley, mayor, as principal, and Walter P. Rice and A. Wiener, as surety, are held and firmly bound unto The Cleveland City Railway Company, in the full and just sum of two hundred and fifty dollars ($250.00), to be paid to the said The Cleveland City Railway Company, its certain attorneys, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

197 Whereas, lately at a session of the April term of the United States circuit court for the northern district of Ohio and the eastern division in a suit pending in said court, between the said The Cleveland City Railway Company, complainant, and the said The City of Cleveland, respondent, in equity No. 5839, an order and decree was rendered against the said respondent, and the said respondent having obtained an appeal and filed a copy in the clerk's office of the said court to reverse the order and decree in the afore-

said suit, and a citation directed to the said The Cleveland City Railway Company, citing and admonishing it to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit on the 13th day of July next.

Now, the condition of the above obligation is such, that if the said The City of Cleveland shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CITY OF CLEVELAND,
By JOHN H. FARLEY, *Mayor.*
WALTER P. RICE.
A. WIENER.

Sealed and delivered in presence of—
T. H. HOGSETT.
M. B. EXCELL.

198 Endorsements on undertaking for appeal: No. 5839. United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company, complainant, *vs.* The City of Cleveland, defendant. Undertaking for appeal. Filed Jun- 16, 1899, and approved, Irvin Belford, clerk, U. S. circuit court, N. D. O.

199 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

To the Cleveland City Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 13 day of July next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein The City of Cleveland is appellant and you are appellee, to show cause, if any there be, why the order and decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13 day of June, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third.

WM. H. TAFT,
Circuit Judge.

Service of the foregoing citation is hereby acknowledged and the appearance of the appellee is hereby entered.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Appellee.

200 *Stipulation.*

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. Stipulation.

Whereas an appeal from the interlocutory order granting an injunction heretofore made in this case has been taken to the United States circuit court of appeals, thereby making necessary the printing and forwarding to that court of the record in this case, and

Whereas the attorneys for the parties hereto are considering the advisability of amending and have agreed to amend, the pleadings herein to the end that the constitutional question as to the right of the city of Cleveland to pass the ordinance of which complainant complains in view of the contract rights of complainant, may be properly and finally determined and adjudicated at the same time saving to each party all its rights to hereafter determine in this court the reasonableness in the reduction of fares provided for in said ordinance:—

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the printing and filing of the record in this case shall be delayed for the time being, and that until the said record shall be printed and filed in the United States circuit court of appeals, or until further stipulation as to the most practical manner of properly making and adjudicating the constitutional question heretofore referred to shall have been made, all of the rights of the parties hereto shall be and remain *status quo*.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for Complainant.
T. H. HOGSETT,
BEACOM, EXCELL & GAGE,
Attorneys for Defendant.

201 Endorsements on stipulation: No. 5839. Circuit court of the United States, northern district of Ohio, eastern division. The Cleveland City Railway Company, complainant, *vs.* The City of Cleveland, defendant. Stipulation. File W. H. T. Filed Jul. 8, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Order Enlarging Time for Filing Record.

April Term, A. D. 1899, to-wit, July 8th, 1899.

Present: The Honorable William H. Taft, U. S. circuit judge.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5839. Equity.

It appearing to the court, by stipulation herewith submitted, that the appellant, The City of Cleveland, by its solicitors, desires to have the time within which the transcript of record is required to be filed, according to the citation duly issued and signed herein, in the circuit court of appeals for the sixth circuit, enlarged,

It is therefore ordered, in accordance with such stipulation, that the time within which such transcript of record shall be filed
202 in the circuit court of appeals for the sixth circuit be, and hereby is, enlarged to September 1st, 1899.

Done at Cincinnati, Ohio, this 8th day of July, A. D. 1899.

WM. H. TAFT,
Circuit Judge.

203 *Order of Continuance.*

April Term, A. D. 1899, to-wit, August 14, 1899.

Present: Honorable Horace H. Lurton, U. S. circuit judge.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } 5839. Chancery.

This cause is continued to the next term of this court.

Notice to Clerk to Delay Record.

The Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } No. 5839. In Equity.

To the clerk of said court:

You are hereby notified to delay the forwarding of the record and papers in the above case to the U. S. circuit court of appeals,

until November 1, 1899, in pursuance with the agreement between the attorneys in said case.

T. H. HOGSETT,
Attorneys for Defendants.

Endorsements on notice: No. 5839. The Cleveland City Railway Co. *vs.* The City of Cleveland, Notice to clerk: Filed Sep. 1, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, att'y for def't.

204 *Order of Continuance.*

October Term, A. D. 1899, to-wit, Feb. 3, 1900.

Present: Honorable Wm. H. Taft, U. S. circuit judge.
Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } 5839. Chancery.

This cause is continued to the next term of this court:

Order of Continuance.

February Term, A. D. 1900, to-wit, March 12, 1900.

Present: Hon. Wm. H. Taft and William R. Day, U. S. circuit judges.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } 5839. Chancery.

This cause is continued to the next term of this court.

Order Granting Complainant Leave to File Amended Bill by May First, 1900.

April Term, A. D. 1900, to-wit, April 3rd, 1900.

Present: Hon. William R. Day, United States circuit judge, Hon. George P. Wanty, Hon. Chas. D. Clark United States district judges, sitting by designation.

THE CLEVELAND CITY RY. CO.
vs.
THE CITY OF CLEVELAND. } 5839. Chancery.

In this cause, on application of counsel for complainant leave is granted to file an amended bill herein by May 1st, A. D. 1900.

205 *Order Granting Complainant Leave to File an Amended Bill of Complaint Instanter.*

April Term, A. D. 1900, to-wit, May 5, 1900.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } 5839. Chancery.

On motion of complainant, it is ordered that said complainant has leave to file an amended bill of complaint instanter, and that the temporary injunction heretofore granted in this cause be and the same is hereby continued in full force and effect.

206 *Amended Bill of Complaint.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } Amended Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

The above named complainant, The Cleveland City Railway Company, a corporation duly organized and existing under the laws of the State of Ohio and a citizen of said State, brings this its amended bill of complaint against the above-named defendant, The City of Cleveland, a municipal corporation of the State of Ohio and a citizen thereof.

And thereupon your orator complains and says:

I. The complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway hereinafter in this bill more particularly set forth.

The defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and, as respects the matters and things hereinafter set forth as to ordinances affecting said complainant, said defendant acts under delegated power from

the legislature of the State of Ohio; and, so acting, has made
207 sundry contracts with your orator and its predecessors in interest under which it is so operating said lines of railway in said city.

II. That the amount in controversy in this action, which is a civil action, amounts, exclusive of interest and costs, to more than the sum of five thousand dollars, and is a controversy arising under the Constitution of the United States, in this, that your orator seeks relief against the defendant by this bill by reason of an attempt on the part of defendant to enforce against your orator a law of the State of Ohio impairing the contract rights of your orator, and the operation of which, if permitted, would take from your orator, its property without due process of law and deny to it the equal protection of the law,—in contravention of and violation of the Constitution of the United States, and especially contrary to and in violation of section 1 of article 14 of the amendments to the Constitution of the United States, and section 10, article 1, of the Constitution of the United States.

III. Your orator is a consolidated railway company, organized in the year 1893, having a capital stock of $8,000,000.00, of which $7,600,000.00 have been issued; having also a bonded indebtedness, which was assumed upon the consolidation as part of the indebtedness of one of the constituent lines hereinafter mentioned, amounting to $2,026,000.00, payable within eleven years, with five per cent. interest, payable semi-annually, and secured by mortgage upon one of the constituent lines.

Said company was formed by the consolidation of two existing railway companies in the city of Cleveland, each of which owned and was operating lines of street railway under ordinances
208 duly passed by said municipality, the city of Cleveland, under delegated power from the State of Ohio, and accepted by said companies. By the terms of such consolidation, and the force and effect thereof as provided by the statutes of Ohio, your orator became and is possessed of all the rights, franchises, privileges, and property theretofore possessed by said constituent companies and each of them. The constituent companies which were so consolidated, forming your orator, were: The Woodland Avenue & West Side Street Railroad Company, and the Cleveland City Cable Railway Company, each of which was a corporation organized under the laws of the State of Ohio for the purpose of operating lines of street railway in the city of Cleveland.

IV. That each of said constituent companies so consolidated was, prior thereto, operating its respective lines of street railway under ordinances passed by the city of Cleveland in pursuance of power delegated to it by the legislature of the State of Ohio, and which ordinances having been accepted by said railway companies severally, became and were contracts, binding upon both said city and upon each of said railway companies during the period of time for which said grants were made.

V. The said Woodland Avenue & West Side Street Railroad Company, which, as aforesaid, was one of the constituent companies forming the complainant company, was organized in 1885, and was a consolidated company formed by the consolidation of two constituent companies, each of which, prior to said consolidation, owned and operated lines of street railway in the city of Cleveland, to-wit: the West Side Street Railroad Company and the Woodland Avenue Railway Company; and the said Woodland Avenue Railway Company, which was so consolidated, was the successor, by pur-
209 chase, of the Kinsman Street Railroad Company, having become such about the year 1880, at which said time said Kinsman Street Railroad Company was operating its line of railway under and by virtue of an ordinance passed by the city council of the city of Cleveland on August, 25th, 1879, and which ordinance is in words and figures as follows:

An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland.

Whereas, the legislature of the State of Ohio did, on the 12th day of June 1879, pass an act entitled "An act to amend sections 4 and 5 of chapter 5 of division 8 of the act entitled An act to amend, revise and consolidate the statutes relating to municipal corporations, to be known as title 12, part 1, of the act to revise and consolidate the General Statutes of Ohio," passed May 14, 1878, in which act it is recited, among other provisions relating to grants and permits for the use of streets for the purpose of constructing and operating street railroads therein, and for the renewal of grants heretofore made to individuals, companies, or corporations that the counsel "of any city of the first and second grade- of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interests;" and

Whereas, the Kinsman Street Railroad Company, a corporation existing under the laws of Ohio, and now and heretofore operating a street railroad in and through certain streets in the city of Cleveland, under and by virtue of a grant and permit previously obtained, has made application in writing for a renewal of such grant and permit to maintain and operate its said street railroad in and along the streets as heretofore and now located and operated, for the period of twenty-five years from and after the 20th day of September, 1879, therefore

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Kinsman Street Railroad Company, its successors and assigns be and the same are hereby authorized to reconstruct, maintain and operate its double track street railroad, with the necessary switches, turn-tables and turn-outs as heretofore constructed and now maintained and operated in the city of Cleveland, commencing on Superior street at the inter-section of Water street; thence to and

around the southwest corner of Monumental square to Ontario street; thence through Ontario street to and through a portion of Broadway street to Woodland avenue (formerly Kinsman street), thence through said avenue to Madison avenue, subject to the following conditions and limitations, to wit:

SEC. 2. All track hereafter laid by the said company to be of the same guage as heretofore and now existing, and the rail of
210 the same pattern as now laid and used on said road, with suitable gutters at all necessary points, so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the city council, and subject at all times to be taken up and relaid whenever deemed necessary by the council, for the purpose of regrading said streets, constructing sewers, laying water or gas pipes therein at the expense of the company.

SEC. 3. Whenever it shall be deemed necessary to grade, pave and improve any of the streets wherein said tracks are laid, the company shall be required to pave any part or all of the track between the rails with gravel, stone or other pavement as the council may deem proper; and if said company after reasonable notice, shall fail to do such repaving at the same time that any such street or streets are being so improved by said city, or at the time named in such notice, then said city may do such paving and assess the cost of such paving against said company in the same ordinance with the property owners on said street, or by a separate ordinance, and may collect the amount thereof by suit or otherwise according to law. And said company is also required to keep such pavement in constant good order; said paving and repairing to be done under the direction of and to the acceptance of the board of improvements.

SEC. 4. Said company is hereby required to keep clean and free from dirt so much of its roadway in said streets as may be occupied by its said tracks and turn-outs, and said company shall cause the dirt or street cleanings to be removed or placed in heaps in such manner as not to interfere with the free use of the streets by the public, and in all cases when it becomes necessary to remove snow or ice from said tracks it shall be distributed evenly over the surface of the balance of the street, so as not to interfere with the free use and occupancy of the same by the public.

SEC. 5. Said company is hereby required to pay a *pro rata* share of the cost of sprinkling of any street occupied by its said railroad tracks, whenever the council shall by ordinance determine that the same shall be sprinkled; and in order to determine what such *pro rata* share shall or may be, the area of the whole portion of the street occupied by said company's tracks shall be computed, and the amount to be paid by said company shall bear relation to the whole cost of such sprinkling as the area of the street occupied by its tracks is to the whole area sprinkled.

SEC. 6. Said company shall place and continue on said railroad good cars with all the modern improvements for the convenience

and comfort of passengers, and shall run cars thereon as the public convenience may require, under such directions as the city council may from time to time prescribe.

SEC. 7. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient.

SEC. 8. It is understood and agreed that the city of Cleveland shall not be held liable to said company for any damage to it arising from the breakage of sewer or water pipe or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repaving of the same, or from any delay or damage that may be caused by fire or otherwise. All
211 rights vested in the city council, the trustees of water works, or gas company, in respect to the care and improvement of streets, the construction of sewers, culverts or drains, and the laying of water or gas pipes therein, are in no way to be impaired and affected by the privileges hereby granted to said company, but the rights and priv-leges granted to said company by virtue of this ordinance shall be subject thereto; and said company shall be liable for any loss or injury that any person may sustain by reason of any neglect or carelessness or misconduct of their agents or servants in the management; construction or use of said railroad; and said company shall indemnify and hold the city harmless from any damage that may be claimed by property holders, or by — person or persons, on account of the laying of the track, or in the use or by the reason thereof, or by running the cars thereon.

SEC. 9. And be it further ordained, That the following specifications are hereby required by the council in the running of said company's cars:

1. While the cars are turning the corners from one street to another, the horses shall not be driven faster than a walk.

2. The rate of speed of all cars shall be subject to the direction of the city council from time to time.

3. No car shall be allowed to stop on a cross walk, nor in front of any intersecting street, except to avoid collision, or to prevent danger to persons in the street; nor shall any car be left or remain standing on any street at any time, unless the same is attached to a team and waiting for passengers.

4. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform over the crossing.

5. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving toward it, and on the first appearance of danger to such team or person, or other obstruction, the car shall be stopped in the shortest time and space possible.

6. The conductor shall not allow ladies and children to enter or leave the cars while in motion.

7. Conductors shall announce to the passengers the names of the streets or places wherever the cars cross in connection with any other railway track.

8. The cars, after sunset, shall be provided with signal lights, and each team shall at all times have a bell attached to some portion of the harness.

SEC. 10. The cars of said company shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes, up so as to leave the track unobstructed; and the drivers of any vehicle refusing to do so when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars, on conviction before the police court, and cost of prosecution; and all fines collected under this section shall be paid into the city treasury, to the credit of the street fund; provided, that if any person or persons shall have cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load and unload the same, without being liable to the penalty attached by this section, provided, that such person of persons shall have first obtained the consent of the board of city improvements for such removal.

212 SEC. 11. Said company shall be required to pay to the city of Cleveland an annual license of ten dollars for each car running on this railroad.

SEC. 12. The council hereby reserves the right to grant any other company, corporation or individual, the joint use of the tracks of the said Kinsman Street Railroad Company as herein provided for in any and all the streets between Central market and the western terminus of said company's road, upon such terms and conditions as the council shall deem just and equitable.

SEC. 13. The authority, privileges and franchise herein granted and renewed to said company, its successors and assigns, are to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879; said grant of renewal is hereby declared to be conditioned and independent upon the payment by said company, its successors and assigns, of the sum of fifty thousand six dollars and fifty cents, ($50,006.50) to the city treasurer within one year from the 1st day of September, 1879, which said sum is due from said company to the city for the cost and expense of paving said company's tracks, between the rails, and other charges against said company in favor of said city, but if the property and franchise of said company shall be sold at judicial sale within the time aforesaid, then said sum shall be paid within sixty days from the date of confirmation of such sale by the court, and in either case said sum shall bear interest at the rate of seven per cent. per annum from said 1st day of September, 1879.

SEC. 14. That in case of failure by neglect or otherwise on the part of said Kinsman Street Railroad Company, its successors or assigns,

to perform all and singular the conditions of this ordinance, together with all and singular the general ordinance and the future ordinances of the city in relation to said road, the privileges hereby granted and renewed shall become void and of no effect, and shall cease upon the adoption of a resolution of council to that effect.

Passed August 25, 1879.

VI. By the terms of the consolidation in 1885 of said West Side Street Railroad Company and the Woodland Avenue Railway Company, said consolidated company known as the Woodland Avenue & West Side Street Railroad Company became vested with all and singular the property, rights, privileges and franchises of said two constituent companies.

VII. The Cleveland City Cable Railway Company, one of the constituent companies forming the complainant company, at the time of such consolidation, was the successor and owner by
213 purchase of all of the property, rights, privileges and franchises of the St. Clair Street Railroad Company and the Superior Street Railroad Company, each of which companies was a corporation duly organized under the laws of the State of Ohio, and prior to the formation of said Cleveland City Cable Railway Company, was the owner of and operating lines of street railway in the city of Cleveland, under various grants and contracts with said city.

VIII. By virtue of the consolidation of the Woodland Avenue & West Side Street Railroad Company and the said Cleveland City Cable Railway Company in 1893, as hereinbefore stated, the complainant company became vested with all the property, rights, privileges and franchises of said constituent companies and each and all of said companies hereinbefore mentioned.

IX. Your orator says that, prior to the year 1885, when the consolidated company aforesaid known as the Woodland Avenue & West Side Street Railroad Company was organized, the two constituent companies forming such consolidation were independent lines of street railway; one operating the lines of railway chiefly upon the west side of the Cuyahoga river, the other upon the east side of said river running to the southeasterly portion of the city, and each of them acting under independent franchises and contracts from the city of Cleveland; that there was no exchange of traffic between said companies by way of transfers, and passengers patronizing such roads were compelled to pay one fare to each, irrespective of the distance they desired to travel. The result of this situation was, that although the west and east sides of the river in Cleveland were closely allied, and a very important part of the population of the city, both as respects business and residents, resided on the west side of the river, there was no street railway communi-
214 cation between such two parts of the city except by payment of two fares over said two lines of railway.

X. That, at the time of the consolidation of said West Side Street Railroad Company and said Woodland Avenue Railway Company

lines, said West Side Company had the right, by ordinance passed June 5th, 1882, to continue the operation of its road for twenty-five years from the 10th day of February, 1883, and, during all of said term, to charge a cash fare, of five cents for each passenger carried; which said ordinance is in words and figures as follows, to-wit:

An ordinance granting a renewal of franchise to the West Side Street Railroad Company to maintain and operate its street railroad in and through certain streets of the city of Cleveland.

Whereas, the West Side Street Railroad Company, now and heretofore operating a street railroad in and through certain streets of the city of Cleveland under and by virtue of a grant and permit previously obtained, has made application in writing for a renewal of such grant and permit to maintain and operate its said street railroad for the period of twenty-five years from and after the 10th day of February, 1883, therefore,

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the West Side Street Railroad Company, its successors and assigns, *is* hereby authorized for a period of twenty-five years from and after the 10th day of February, 1883, to maintain and operate its railroad in the city of Cleveland, with the necessary switches, turn-tables, and turn-outs, commencing on Superior street at or near its westerly intersection with the public square, thence along Superior street to the easterly end of the viaduct, and from the westerly end of the viaduct on Pearl street to its intersection with Lorain street; thence along Lorain street to Chestnut Ridge road; and from the intersection of Franklin avenue with Pearl street, along said Franklin avenue to Franklin place along the southeasterly and southerly part of Franklin place to Fulton street, and along Fulton street to Lorain street, and from the intersection of Detroit street with Pearl street, along Detroit street to Kentucky street, along Kentucky street to John street, along John street to Harbor street, along Harbor street to Bridge street, and along Bridge street to the depot of the Rocky River Railroad Company; and from the junction of Kentucky street with Detroit street, along Detroit street to the limits of said city on the west; subject to the provisions of an ordinance for the construction, operation and government of street railroads in the city of Cleveland, passed January 24, 1881, and subject also to all ordinances heretofore passed granting to said company the right to extend its tracks.

SEC. 2. The council hereby reserves the right to grant to any other company, corporation or individual the joint use of the
215 tracks of the said West Side Street Railroad Company hereby provided for and herein described in any and all of said streets upon such terms and conditions as the council may deem just and equitable. Provided, that this reservation westerly from Hanover street on Detroit street and southerly from Church street on Pearl street is a reservation for and solely for and limited to such reason-

able use of said company's tracks as may be necessary for the use of cross-town lines, not parallel lines, which may hereafter be constructed, and not for the purpose of reserving the joint use of said tracks with other lines of road which may desire to run thereon. Provided, further, that at the expiration of the present lease to the Brooklyn Street Railroad Company, if said West Side Street Railroad Company shall refuse to further lease to, or arbitrate with said Brooklyn Street Railroad Company, then and in that event the council reserves the right to fix the terms and conditions on which said Brooklyn Street Railroad Company may use the tracks between the market and the viaduct on Pearl street.

SEC. 3. That all ordinances, or parts of ordinances, heretofore passed with reference to the West Side Street Railroad Company, conflicting with the provisions of this ordinance be and the same are hereby repealed, and this ordinance shall take effect and be in force from and after its passage and legal publication.

Passed June 5, 1882.

That the Woodland Avenue Railway Company was operating its line of road under several grants from the city of Cleveland, and, among others, a grant made in 1879, relating to the operation of cars from Water street, through Superior and Ontario streets and Woodland avenue to Madison avenue. This grant provides, among other things, that the company should not charge more than five cents cash fare, and the council in said ordinance reserved the right to thereafter increase or diminish the rate of fare, as it might deem wise and expedient; said last named ordinance being the same ordinance heretofore set out in paragraph V of this amended bill.

That thereafter, on May 14th, 1883, said Woodland Avenue Company entered into a new contract with the city by ordinance duly passed and accepted, by which said company acquired the right to and agreed to extend and construct its line of railway upon Woodland avenue from the crossing of the Cleveland & Pittsburgh Railroad Company's tracks to Corwin street; and in and by said ordinance agreed to new conditions and requirements by the city
216 as to the operation of its cars and the repair and maintainance of streets and pavements thereon; and also agreed to thereafter operate through cars over said entire line, which was an agreement for the benefit of the city and citizens thereof. And also in and by said ordinance said company was granted the right to, and did agree that it would thereafter and during the continuance of said grant, which has not yet expired, charge but one fare of five cents over its entire line, including said extension; and this ordinance and contract so requiring your orator to comply with the conditions of said grant, and in which it so agreed to carry passengers at the rate of fare therein fixed, is still in full force and effect; and which said ordinance is in the words and figures following, to-wit:

An ordinance to permit the Woodland Avenue Railway Company to extend its line of railway on Woodland avenue from the Cleveland & Pittsburg Railway crossing to Corwin street.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Woodland Avenue Railway Company be and is hereby authorized and empowered to extend its line of railway from the present track on Woodland avenue at the Cleveland & Pittsburg Railway crossing easterly on and along said Woodland avenue to Corwin street, and to equip and operate said extention as a single track railway, with all necessary switches, turn-outs and turn-tables, in connection with its main line and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension, by reason of said extension, so that but one fare shall be charged between the eastern terminus of said extension and the western terminus of its main line, provided that said extension shall be completed within three months after the passage of this ordinance.

SEC. 2. The said Woodland Avenue Railway Company shall put said street in as good repair after laying said track as possible, under the supervision of the board of improvements.

SEC. 3. The said Woodland Avenue Railway Company shall operate and run cars on said Woodland Avenue railway from terminus to terminus between the hours of six and half past nine in the morning and between the hours of five and half past seven in the evening, every ten minutes, and shall at all other hours operate the road in accordance with such rules and regulations as the city council may see fit to enact.

SEC. 4. Said Woodland Avenue Railway Company shall reimburse the city for any expense that may be incurred by reason of the supervision of the construction of said extension, printing and advertising this ordinance and other incidental expenses connected therewith.

217 SEC. 5. Whenever said street shall be sprinkled said company shall pay for sprinkling the width of said railway track and sufficient space on each side of the same to make ten feet in all.

SEC. 6. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed May 14, 1883.

The portion of your orator's lines of street railway mentioned in the ordinance of October 17th, 1898, hereinafter referred to, includes that portion of Woodland av-nue in respect to which said Woodland Avenue Railway Company entered into said contract with said city in February, 1883.

XI. At the time of the consolidation of the said West Side and Woodland Avenue Companies, it was part of the plan of the company, upon making such consolidation, that the company should

thereafter operate through cars from the easterly terminus of the Woodland Avenue Company's line at the workhouse to the westerly terminus of the lines of the West Side Company on the west side of the river, a distance of seven or eight miles, and that, whenever it became practicable so to do, also to operate through car service upon branch lines.

In order to carry out the plan above referred to and secure the consent of the city thereto, said companies sent to the city council the following communication, to wit:

"To the honorable the city council of the city of Cleveland, Ohio:

The Woodland Avenue Street Railway Company and the West Side Street Railway Company respectfully represents to your honorable body that they desire to consolidate said companies so that passengers can be carried for one fare between any points upon their respective lines. It is contemplated that cars be run continuously from the regular easterly starting point on Woodland avenue, through the city, across the viaduct, along Pearl street and along Lorain street to the regular westerly stopping point thereon, proper connections and transfers of passengers being made to and from the remaining lines of the said companies.

The companies do not desire any enlarged rights or new franchises beyond being permitted to run their cars from end to end as above indicated, and they will be controlled by all ordinances
218 now controlling the respective companies. Said companies respectfully petition your honorable body to pass the proper ordinance to accomplish the foregoing object.

C. F. EMERY,
Pres. of W. A. R. R. Co.
J. F. CARD,
V. P. West Side St. R. R. Co."

Received Feb. 9th, 1885.

In view of this offer of said consolidated company, the council of the city of Cleveland, on February 16th, 1885, duly passed an ordinance, which is in the words and figures following:

An ordinance to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company and said companies may be consolidated.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the consent of the city is hereby given to the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company on the following conditions:

The said consolidated company to carry passengers through without change of cars by running all cars through from the workhouse

on the line of the Woodland Avenue railway to the point on the West Side street railroad where Cordon avenue crosses Lorain street, and when practicable in the judgment of the council to do likewise on the branches of the consolidated line, and that for a single fare from any point to any point on the line or branches of the consolidated road no greater charge than five cents shall be collected, and that tickets at the rate of eleven for fifty cents or twenty-two for one dollar shall at all times be kept for sale on the cars by conductors.

SEC. 2. Said consolidated company shall be subject to all the liabilities, conditions and penalties to which said several companies are liable; and said consolidated company and its tracks shall at all times be subject to the control, regulation and supervision of the city council, to the same extent that the same several companies and their tracks are now liable.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication, the filing with the city of a written agreement accepting and agreeing to the terms thereof, signed by the proper persons for the companies consolidated, and the payment to the city of the expenses of printing and publishing this ordinance.

Passed February 16, 1885.

And thereafter said Woodland Avenue & West Side Street Railroad Company duly accepted the terms and conditions of said ordinance, and thereafter, and at all times since, the said Woodland Avenue and West Side Street Railroad Company, and your orator as its successor, have complied with all the terms and conditions of said ordinance, and have been and are now carrying passen-
219 gers in accordance with the terms thereof over said entire distance at the rate of fare therein fixed, and selling and accepting tickets for passage as therein provided. And your orator says that its said contract so made with the city upon its consolidation, and so fixing the rate of fare to be charged, had reference to and included the operation of cars upon that portion of Woodland avenue referred to in the ordinance of October 17th, 1898, hereinafter set forth.

XII. That, after said consolidation so forming said Woodland Avenue & West Side Street Railroad Company, to-wit: on or about April 8th, 1887, said company proposing to lay an additional track in Franklin avenue and to extend its line of railway in Franklin avenue, entered into a contract with the defendant city, duly evidenced by ordinance duly passed by the city council and accepted by said company, wherein, among other things, it was provided that the grant therein made should continue and terminate with the grant of the main line of said company on the 10th day of February, 1908, and it was made with said Woodland Avenue & West Side Street Railroad Company upon the express condition that no increase of fare should be charged by said railway company upon any part of its main line or on said extension, so that but one

fare, not to exceed five cents, should be charged between any points on said company's main line or extensions, including the extension therein granted, and that said company should sell tickets on its cars at the rate of eleven for fifty cents or twenty-two for one dollar. Said ordinance, so passed April 8th, 1887, is in the words and figures following, to-wit:

An ordinance to authorize the Woodland Avenue and West Side Street Railroad Company to lay an additional track in Franklin avenue between Pearl street and the westerly line of Franklin circle, and to extend its line of railroad in Franklin avenue from the westerly line of Franklin circle to and connect with its track on Kentucky street.

220 SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Woodland Avenue & West Side Street Railroad Company, its successors and assigns, be and the same is hereby authorized and empowered to lay an additional track in Franklin avenue, between Pearl street and the westerly line of Franklin circle, and to extend its line of railroad to Franklin avenue from the westerly line of Franklin circle to Kentucky street, as a single track railroad, and connect with the tracks of said company in Kentucky street, as shown on a plan accompanying the petition of said railroad company and referred to the board of improvements March 14th, 1887, and to equip and operate said extension as herein provided, but on the express condition that no increase of fare shall be charged by said railroad company on any part of its main line or on said extension, and so that but one fare, not to exceed five cents, shall be charged between any points on said company's main line or extension, including the extension herein granted, and said company shall sell tickets on its cars as follows: Eleven (11) tickets for fifty cents, and twenty-two (22) for one dollar. And the right herein granted shall terminate with the present grant of the main line, to-wit: on the 10th day of February, 1908.

SEC. 2. That said company shall construct the tracks herein provided for during the time of the repaving of said Franklin avenue, and shall grade, drain, improve and pave with the same material and in like manner, and at the same time that the balance of the roadway is paved, and at its own expense, the spaces between the rails of each and all of its tracks in said avenue, and cars shall not be run over the tracks herein provided for until the entire roadway and tracks are paved between Pearl and Kentucky streets.

SEC. 3. That in case of failure by neglect or otherwise on the part of said Woodland Avenue & West Side Street Railroad Company, its successors and assigns, to perform all and singular the conditions of this ordinance or amendments hereto, together with all and singular the general ordinances of the city now or hereafter in force, or amendments thereto, and the ordinance granting a renewal of franchise to the West Side Street Railroad Company, passed June 5

1882, and amendments thereto; also the ordinance to fix the terms and conditions upon which the tracks of the West Side Street Railroad company, and the tracks of the Woodland Avenue Railway Company, and said companies may be consolidated, passed February 16th, 1885, and amendments thereto; the privileges herein granted shall become void and of no effect, and shall cease upon the passage of an ordinance to that effect.

SEC. 4. That this ordinance shall be in force from and after its passage and legal publication and the payment, by said company, of the expense of publishing the same, and the filing in the office of the city clerk a written acceptance of the terms and conditions hereof.

Passed April 8, 1887.

Your orator says that said grant and contract so made April 8th 1887, is still in full force and effect, and that part of the main line of railroad referred to in said ordinance was the line of railway operated upon Woodland avenue (formerly Kinsman street), and
referred to in a certain ordinance of the city of Cleveland
221 passed October, 17, 1898, and hereinafter set forth.

XIII. That, after the formation of said Woodland Avenue & West Side Street Railroad Company, to wit: on August 12th, 1887, it entered into a contract with the city of Cleveland, evidenced by ordinance duly passed, relating to the extension of its tracks in Franklin avenue from Kentucky street to Waverly avenue, and along Waverly avenue to connect with its line of railroad on Bridge street, which grant to said company was, by its terms, to continue and expire with the grant of the main line on the 10th of February, 1908, and in and by said ordinance it was expressly provided, and the same was made upon the condition agreed to by said company, that no increase of fare should be charged by said company on any part of its main line or on said extension; that but one fare, not to exceed five cents, should be charged between any points on said company's main line or extension, including the extension herein granted; and that said company should sell tickets on its cars as follows: Eleven tickets for fifty cents or twenty-two for one dollar. Said ordinance, so passed August 12th, 1887, is in the words and figures following, towit:

An ordinance to authorize the Woodland Avenue and West Side Street Railway Company to lay and extend a track in Franklin avenue from Kentucky street to Waverly avenue, thence along Waverly avenue to connect with its line of railroad on Bridge street.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Woodland Avenue and West Side Street Railway Company, its successors and assigns, be and the same is hereby authorized and empowered to extend and lay a single track in

Franklin avenue, from Kentucky street to Waverly avenue, thence southerly in Waverly avenue to connect with the track of said company in Bridge street, as shown on the plan accompanying the petition of said railroad company and referred to the board of improvements May 23, 1887, and to equip and operate said extension as herein provided, but on the express condition that no additional increase of fare shall be charged by said company or any part of its main line or on said extension, and so that but one fare, not to exceed five cents, shall be charged between any points on said company's main line or extensions, including the extension herein granted, and said company shall sell tickets on its cars as follows:

222 Eleven (11) tickets for fifty (50) cents and twenty-two (22) tickets for one dollar ($1), and the right herein granted shall terminate with the present grant of the main line, to-wit: on the 10th day of February, 1908.

SEC. 2. That said company shall construct the tracks herein provided for during the time of the repaving of said Franklin avenue, and shall grade, drain, improve and pave with the same material, and in like manner, and at the same time that the balance of the roadway is paved, and at its own expense, the spaces between the rails of each and all of its tracks in said Franklin avenue, and cars shall not be run over the tracks herein provided for until the entire roadway and tracks are paved between Kentucky street and Waverly avenue.

SEC. 3. That in case of failure by neglect or otherwise, on the part of said Woodland Avenue & West Side Street Railroad Company, its successors and assigns, to perform all and singular the conditions of this ordinance or amendments hereto, together with all *the* singular the general ordinances of the city now or hereafter in force, or amendments thereto, and the ordinance granting a renewal of franchise to the West Side Street Railroad Company, passed June 5, 1882, and amendments thereto; also the ordinance to fix the terms and conditions upon which the tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company and said companies may be consolidated, passed February 16th, 1885, and amendments thereto, the privilege herein granted shall become void and of no effect and shall cease upon the passage of an ordinance to that effect.

SEC. 4. That this ordinance shall be in force from and after its passage and legal publication, and the payment by said company of the expense of publishing the same, and the filing in the office of the city clerk written acceptance of the terms and conditions hereof.

Passed August 12, 1887.

Your orator says that said grant and contract, so made August 12th, 1887, is still in full force and effect, and that the main line of said Woodland Avenue & West Side Street Railroad Company referred to in said last mentioned ordinance included the line of railway upon Woodland avenue originally constructed under a grant from

the city of Cleveland, which is referred to in a certain ordinance of the said city passed October 17, 1898, and hereinafter set forth.

XIV. On or about June 20th, 1892, the said Woodland Avenue & West Side Street Railroad Company entered into an additional contract with the city of Cleveland, evidenced by ordinance duly passed by the city council and accepted by said company, relating
223 to the laying of an additional track on Kinsman street from Woodland avenue southeasterly along said Kinsman street to the city limits; and in and by said ordinance said company agreed to various requirements, in addition to its existing obligations to the city, with respect to paving upon the street and repaving thereon, and keeping portions of said pavement in repair; and accepted said ordinance and agreed to abide by the terms thereof and to incur the large expenditures made necessary in such compliance, upon the express condition that it should charge but one fare between any points on said company's main line and extension, and sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar; the rights under said grant to terminate with the then present grant of said company's main line on the 10th of February, 1908; which said ordinance is in the words and figures following, to-wit:

An ordinance to authorize the Woodland Avenue & West Side Street Railroad Company to lay an additional track in Kinsman street from Willson avenue southeasterly along the said Kinsman street to the city limits.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Woodland Avenue & West Side Street Railroad Company, its successors and assigns be and the same *is* hereby authorized and empowered to lay an additional track in Kinsman street, thereby making the line upon said street a double track street railway, beginning at the intersection of its main tracks near the corner of Willson and Woodland avenues and extending southeasterly along said Kinsman street to the city limits, and to equip, maintain and operate said line of double track railway in said street in the same manner and by the same motive power as used by said company on its other lines of street railway in said city, upon the express condition that no increase of fare shall be charge- by said railroad company upon any of its lines, and that but one fare only shall be charged between any points on said company's lines or extensions, and that said company shall sell passage tickets on its cars as follows: eleven tickets for fifty cents, and twenty-two tickets for one dollar; provided, that the right therein granted shall terminate with the present grant of the main line of said company, to-wit: on the 10th day of February, 1908.

SEC. 2. Said grant is made upon the further terms and conditions, to-wit: The said company shall remove its present track in said street and construct and relay its present track and the additional

track hereinbefore provided to be laid with the center line
224 between said tracks upon the center of said Kinsman street, and at the time it constructs its said track as hereinbefore provided, it shall pave with Medina block stone and cement filling a strip sixteen feet in width upon said Kinsman street, extending from said Willson avenue to the city limits, the center line of which said strip shall be the center line of said street, and shall maintain and keep the pavement in good repair during the full time of its right to occupy said street for the purpose aforesaid; or at the option of the city shall pay to the city the cost of such repaving and keeping in repair as hereinafter provided. Provided, that the said repaving shall be done as follows: At the time of constructing its said line of double track street railway the company shall pave at its own expense, in the manner hereinbefore provided and under the supervision and to the satisfaction of the director of public works, the space between the outer rails of its said tracks, inclusive of the space between its said tracks, being a space of 14 feet in width and extending along said Kinsman street from said Willson avenue to said city limits; and the said railroad company shall, whenever the city shall proceed to repave said Kinsman street or any part thereof, between said Willson avenue and the said city limits, pay to the city, immediately upon the acceptance by the city of any bid for such repaving, a sum equal to the cost and expense of repaving a strip two feet in width and extending the full length of such repaving, between said Willson avenue and said city limits.

SEC. 3. Whenever after such repavement shall have been laid the city shall again proceed to repave said street or any part thereof, along said line of said company's said railway at any time during the continuance of this grant, the said company, its successors and assigns, shall at the time of such repaving by the city, repave with like material to that used by the city, and in like manner under the supervision and to the satisfaction of the director of public works, the said strip of fourteen feet in width between the outer rails of its said tracks to the full length of such repaving, and shall pay to the city immediately upon the acceptance by the city of any such bid for such repaving a sum equal to the cost and expense of repaving a strip two feet in width and extending the full length of such repaving between said Willson avenue and the said city limits.

SEC. 4. This grant is made subject to all existing provisions of ordinances of the city now in force, and to all such as may at any time hereafter be passed by the council providing for or regulating the construction, operation and government of street railroads, and no cars shall be run or operated by the said company upon its tracks upon said Kinsman street except such as shall have posted conspicuously within the same the certificate of the city clerk evidencing the payment of the license fee provided and required by ordinance.

SEC. 5. That this ordinance shall take effect and be in force from and after its passage and legal publication, the payment to the city

by the said company of the cost of such publication, and the filing within ten days with the city clerk of a written acceptance of the conditions of this ordinance by the said company and the approval thereof by the council.

Passed June 20, 1892.

225 Your orator says that said grant is still in full force and effect; that it has complied with all the terms and conditions thereof; and that the main line over which it is so authorized to charge a fare of five cents, and to sell tickets as in said ordinance provided, includes the line upon Woodland avenue (formerly Kinsman street) referred to in the ordinance of the city of Cleveland passed October 17th, 1898, and hereinafter set forth.

XV. Your orator says that in each and every one of the contracts entered into by said Woodland Avenue & West Side Street Railroad Company subsequent to the grant to the Woodland Avenue Company in 1879, relating to the operation of cars from Water street to Madison avenue on Woodland, the said Woodland Avenue & West Side Street Railroad Company and its predecessors gave to the city new and valuable considerations for the grants made, by way of submitting to increased requirements of paving upon the streets, the operation of through cars for the accommodation of the public; and the selling of tickets upon its cars, so that, as respects each of said grants as they were made from time to time, the city upon each occasion received new and adequate consideration for each and all of the rights so granted to said company.

XVI. That, prior to May 13th, 1893, when your orator was formed as a consolidated company, the Cleveland City Cable Railway Company owned and operated lines of street railway upon Superior street by cable power, and lines upon St. Clair street operated by horse power, and, by virtue of grants from the city of Cleveland, said company was authorized, for a period of years which has not yet expired, to operate its said lines, and upon each of them to charge, throughout the entire terms of said grants, a cash fare of five cents; that the ordinances which *so* authorized it so to
226 do had been duly accepted by said company, and it had expended on the faith thereof hundreds of thousands of dollars in the construction and equipment of its said road; and each and all of the said grants by which it was so operating its said road upon said cash fare of five cents are still in full force and effect.

XVII. The foregoing being the situation of the two companies forming your orator at the time of said consolidation, and both of said companies having grants and contracts authorizing the operation of their several lines of road, which had not yet expired and which are still in full force and effect, and which so authorize them and each of them to charge said cash fare of five cents, there was formed, by the consolidation of the two last mentioned companies, your orator as a consolidated company; and, by the terms of said consolidation, it was proposed by your orator to thereafter operate

all the lines of said two constituent companies so acquired as an entire system, and to operate through cars thereon and to permit passengers, for one of said cash fares of five cents, to ride from one end of said line so consolidated to the other, and thereafter, and to the end that it should be duly authorized to carry out such plan, your orator applied to the common council of The City of Cleveland, the defendant, for approval of said plan and for permission to so operate its cars, which application is in the words and figures following:

"CLEVELAND, *May* 13, 1893.

To the honorable council of the city of Cleveland, Ohio:

The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company have agreed to consolidate their two lines into the Cleveland City Railway Company; the consolidation to take effect June 1st, 1893. It is proposed on June 1st, 1893, to immediately issue proper transfers, without extra charge, so that passengers on any line of the Woodland Avenue & West Side Street Railroad Company may be transferred to and have a continuous passage upon any line of the Cleveland City Cable Railway Company within the limits of the city of Cleveland, and also so that passengers upon any line of the Cleveland City Cable Railway Company may be transferred to and have a
227 continuous ride upon any line of the Woodland Avenue & West Side Street Railroad Company within the city of Cleveland; only one fare to be charged for such ride, and, as soon as the necessary improvements can be made, additional cross-town lines will be run and only one fare charged for a continuous ride upon any additional lines within the city of Cleveland.

Respectfully submitted,

WOODLAND AVENUE & WEST SIDE STREET R. R. CO.,
Per M. A. HANNA, *President.*
CLEVELAND CITY CABLE RAILWAY COMPANY,
By FRANK DE H. ROBISON, *President.*"

And on May 15th, 1893, the common council of said city duly passed and adopted the following resolution:

"Resolved, That the communication from the Woodland Avenue & West Side Street Railroad Company and from the Cleveland City Cable Railway Company, setting forth their consolidation into the Cleveland City Railway Company, be received; and that this council approve such consolidation upon the terms, and conditions stated in such communication, and that such consolidated company shall be subject to all the ordinances and regulations now or hereafter in force."

Your orator shows that ever since said resolution of May 15th, 1893, it has continued the operation of its various lines of street

railway as therein contemplated and required, and has continued to charge only the same cash fare of five cents for each passenger, in strict compliance with each of the different contracts which each of said constituent companies had with said city, and which are still in full force and effect. And your orator at once adopted and put in force the system of transfers contemplated in said council resolution, and has kept on sale tickets at the rate of eleven for fifty cents and twenty-two for one dollar, and has ever since said consolidation been carrying passengers, and is now so doing over its entire system, with the system of transfers provided for in said resolution for one cash fare of five cents or tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar.

XVIII. Your orator shows that no one of the grants or contracts aforesaid under which said constituent companies which formed your orator were authorized to operate their various lines of
228 street railway and to charge a cash fare of five cents for each passenger carried thereon, and to sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar, has expired, but your orator alleges the fact to be that each and all of said grants and contracts are in full force and effect; and your orator shows that no one of the grants under which it is operating its various lines of street railway expire before the year 1908, and it has, by the express provisions of said several contracts with the defendant city, the right to so operate its lines of railway during the periods of said grants, and to charge a cash fare of five cents for each passenger carried, or a ticket to be sold by it at the rate of eleven for fifty cents or twenty-two for one dollar.

XIX. Your orator further shows that, notwithstanding the provisions of its several contracts with said city of Cleveland, and in direct violation and impairment of the same, the defendant, The City of Cleveland, acting under delegated power from the State of Ohio, by the action of its common council on the 17th day of October, 1898, passed an ordinance in the words and figures following, to-wit:

Ordinance No. 22437.

By Mr. Hopkins.

An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland."

Whereas, the city council did, on the 25th day of August 1879, pass an ordinance entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets

of the city of Cleveland," by which ordinance said Kinsman Street Railroad Company, its successors and assigns, were authorized to reconstruct, maintain, and operate its double-track street railroad, commencing on Superior street at the intersection of Water street, thence to and around the southwest corner of Monumental square to Ontario street; thence through Ontario street to and through a portion of Broadway street to Woodland avenue (formerly Kinsman street), thence through said avenue to Madison avenue, subject to certain conditions and limitations; and

229 Whereas, it was ordained, as part of these conditions and limitations (section 7), that 'said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient;' and

Whereas, the council does now deem justifiable and expedient a diminution of the rate of fare, therefore,

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines, and all extensions thereof, operated under the aforesaid grant to the said Kinsman Street Railroad Company be and is hereby fixed at four (4) cents cash fare over the whole or any part thereof.

SEC. 2. For the better accommodation of the public, any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

That said ordinance has been signed by the mayor of the city and publication of the same has been made; and the city and its mayor and other officials, and members of the city council, declare their intention to at once enforce against your orator compliance with the provisions of said ordinance, and that, by virtue of the statutes in such cases made and provided, said ordinance goes into effect on Tuesday the first day of November, 1898.

XX. Your orator further shows that said ordinance of October, 17, 1898, so requiring it to carry passengers at a cash fare of four cents and to sell tickets at the rate of seven for twenty-five cents, is in direct violation and contravention of the contract obligations existing between your orator and said defendant, and impairs the contract rights of your orator in this, that whereas, your orator is entitled, by virtue of its said contracts with said city of Cleve-

230 land, to charge upon all of its said lines a cash fare of five cents until the expiration of its several grants, the provisions of said ordinance require your orator to accept a cash fare of four cents; and whereas, your orator is entitled, by virtue of its said

contracts with the city of Cleveland, to sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar, good for passage upon its cars, said ordinance requires your orator to sell tickets good for passage at the rate of seven tickets for twenty-five cents; and said ordinance so passed by said city council of the defendant City of Cleveland, if enforced, would so impair the contract rights of your orator, in violation of the Constitution of the United States.

XXI. Your orator further shows that the practical effect and operation of said ordinance is to reduce the rate of fare to be received by your orator to four cents for a cash fare and about three and four-sevenths (3.571) cents for ticket fare; that a cash fare of four cents is an inconvenient and heretofore unknown rate of fare, there being no coin of that denomination, which fact will tend to largely increase the number of passengers who will buy tickets rather than pay such fare of four cents; that experience in the operation of street railways has shown that where there is such a difference in amount between ticket and cash fare, as a matter of convenience about 70% of passengers use tickets; so that, in practical effect, if said ordinance be enforced, your orator would be obliged to carry about 70% of its passengers at the rate of 3.571 cents and about 30% would pay the cash fare of four cents, whereby the gross receipts of your orator would be reduced more than one-fifth, and while its gross earnings would thus be reduced more than one-fifth, its operating expenses would remain the same, as no reduction can be made in the operating expenses by reason of the reduction of
231 fare; that the result of compelling your orator to operate under such ordinance would be to diminish its net receipts more than 50%, which fact appears by the following statement of your orator's gross and net earnings for the year 1897 under the existing rate of fare, and a statement of what such gross and net receipts would have been under the operation of said ordinance of October 17th, 1898:

In the year 1897 your orator carried

15,627,269 passengers at 5 cents each..	$781,363.45	
6,697,223 passengers at 11 for 50 cents...	304,419.23	
Receipts from other passengers.....	195.13	
		$1,085,977.81

Average rate of fare per passenger, 4.87 cents.

At the rates of fare sought to be fixed by said ordinance of October 17th, 1898, your orator's receipts in 1897 would have been:

15,627,269 passengers at 4 cents.....	$625,090.76	
6,697,223 passengers at 7 for 25 cents.....	239,186.54	
Receipts from other passengers.....	195.13	
		864,472.43
A reduction of 20.4%, or.....		$221,505.38

And the average rate of fare per passenger carried, 3.87 cents.

In order to have made the gross receipts equal those of 1897, your orator would have been obliged to carry in 1897, 5,736,950 more passengers than it in fact did carry.

Assuming, as your orator says may fairly be done, that the use of tickets under the proposed ordinance would largely increase; that at least 70% of the passengers who ride would purchase tickets,

232 on the assumption that the proposed rates of fare had been charged in 1897 *1897* and that 70% of the passengers who rode did so upon tickets, then the receipts of your orator would have been as follows:

		$1,085,977.81
6,697,348 passengers at 4 cents.....	$267,893.92	
15,627,144 passengers at 7 for 25 cts.....	558,112.30	
		826,006.22
A reduction of 24%, or.....		$259,971.59

Average rate of fare per passenger carried, 3.70 cents.

And to have earned at this rate the gross receipts of your orator in 1897, it would have been obliged to carry 7,026,260 additional passengers.

Your orator's gross receipts in 1897 were.....	$1,085,977.81
Its ordinary operating expenses.....	664,463.36
Its net receipts.....	$421,514.45
At the proposed rates of fare, assuming that the same number of passengers would have paid cash, your orator's gross receipts in 1897 would have been.....	$864,472.43
Operating expenses.....	664,463.36
Net receipts.....	$200,009 07

That is, for the year 1897, the company would have suffered a loss in income of the difference between $421,514.45 and $200,009.07, viz: $221,505.38; or more than 52.5% of its net income.

At the proposed rates of fare, assuming that 30% of its passengers would have paid cash and 70% would have bought tickets, your orator's gross receipts in 1897 would have been.....	$826,006.22
Its operating expenses.....	664,463.36
Its net receipts.....	$161,542.86

That is, for the year 1897, the company would have suffered a loss in income of the difference between $421,514.45 and $161,542.86, viz: $259,971.59, or more than 61% of its net income.

233 And your orator shows that, in the statement above given as to receipts and operating expenses, nothing is included for interest charges, nor for depreciation, nor for renewals, paving, buildings, machinery, rolling stock or other equipment; nothing for dividends or interest on its capital stock, and nothing by way of a sinking fund which should be allowed by reason of the shortness of the franchises of the company, as hereinafter set forth.

XXII. Your orator shows that, in addition to the expenses and charges entering into the statement of operating expenses as hereinbefore stated, there is a recognized, actual, and definite annual depreciation in the value of electric railway property of the character of the property of your orator, amounting to from 10% to 20% per annum, according to the character of the property and material; that is to say, there is each year a depreciation upon the property necessarily in use by your orator of from 10% to 20%, and in order to provide for this annual depreciation in the value of property, it is necessary that an annual expenditure or the setting aside annually of a fund equal to such depreciation, be made; and your orator alleges that, in addition to the cost of carrying on said railway, hereinbefore stated, there should be added annually a sum amounting to more than the sum of one hundred thousand dollars, which rightfully increases to just that amount the annual cost to your orator of the operation of its railway.

XXIII. Your orator further shows that, among the items of annual expense which have from the time of the formation of said several companies, required great outlays of money and for which your orator can in no way be reimbursed except as it is permitted to operate said property at a fair and reasonable profit, is the matter of street paving; that, under the provisions of most of the grants under which your orator is operating, it is required of the
234 company to pave and keep in repair certain portions of the streets occupied by your orator's tracks, and during the twenty years last past, your orator shows that it and its predecessors have invested in street paving, and as a consideration to the city for grants made to it and to them, in the aggregate about the sum of one million dollars.

XXIV. Your orator further shows that, under the laws of the State of Ohio, it is not competent for councils of municipal corporations to grant rights to street railway companies for any period of time exceeding twenty-five years, and that all of the grants under which your orator is operating its lines of railway were made to expire at the expiration of twenty-five years from the time the same were made; that the average time which your orator's several grants have yet to run before the termination thereof is about thirteen years, and that the rights of your orator in the streets upon one of its main lines expires in the year 1908; that at the expiration of such grants much of the property of your orator will become greatly depreciated in value, and, in fact, much of it will be of little or no value except as such value is dependent upon the ability of your

orator to renew such grants, and as to whether or not such franchises or any of them can be renewed, it is impossible to foretell. Your orator therefore says that, as a matter of ordinary business prudence and in legal fairness and justice in computing the cost of the operation of said railway property and the reasonable income which the owners should receive therefrom, there should be provided each year out of the earnings of the company, in addition to its actual outlay for operating expenses and depreciation of its property as hereinbefore set forth, a sufficient sum to indemnify the stockholders of the company against loss and impairment of the value of their stock and property upon the expiration of said franchises, so far as the value of said
235 stock is dependent upon the continuance of such franchises; and your orator alleges that such annual sinking fund or provision to make good to your orator the loss which it must encounter at the termination of its franchises should be at least the sum of one hundred thousand dollars, and, before it can truthfully be said that your orator is making a profit upon the operation of its road, a sufficient sum should be realized, in addition to the operating expenses, its interest, and the annual depreciation of its property, to enable it to provide for a sinking fund of more than one hundred thousand dollars annually to cover the necessary loss and depreciation in the value of its property upon the expiration of its franchises.

XXV. And your orator shows and alleges that, based upon the actual experience of your orator in the operation of its said road, if said ordinance of October 17th, 1898, were put into operation and your orator compelled to operate its property in compliance with its terms, it will be impracticable and impossible to realize therefrom the actual cost to your orator of maintaining and operating such property; that its bonds would become in default and its entire investment become valueless.

XXVI. Your orator says that no one can predict with any certainty that the gross receipts of your orator, even at the present rates of fare, will be greater in the future than they have been in the past, or that they will even equal the receipts of the past few years; and that there is no certain basis upon which to found an opinion that the lower rates of fare provided for in said ordinance of October 17th, 1898, would increase travel upon your orator's lines, and to so prophesy is to indulge in pure speculation, without any substantial basis of experience upon which to make such an estimate; and your orator alleges that it would not be practicable or possible,
236 within the life of your orator's franchises, to have such an increase of travel as to enable your orator, under the provisions of said ordinance, to pay its operating expenses and any interest to the bondholders, or any dividends or profit to its stockholders.

XXVII. Your orator further shows that the cost to your orator of said properties, upon the purchase of the same at the time of said consolidation of the said constituent companies, is represented substantially by the amount of its capital stock now outstanding

and the bonded indebtedness at that time assumed, and that upon such amount your orator is entitled to earn and receive, in addition to the operating expenses, including a proper allowance for annual depreciation and the establishment of a sinking fund to cover loss and depreciation in the value of the property upon the expiration of its franchises, such an amount as will pay the interest upon its bonded debt, which averages about five per cent. per annum, and such dividend upon its capital stock as it can earn by the economical management of its property at the rates of fare fixed in its present contracts with said city, such rates being, as your orator alleges, fair and reasonable; that, at the time of the filing of the original bill herein, your orator's bonds were valued at and above par, while its capital stock had a market value of about 70 % of its par value, which price fairly represented, as your orator alleges, the value of your orator's investment as the same was valued in the commercial markets for railway securities. And your orator says that very much of its stock and many of its bonds are held by companies and persons and estates, who have purchased the same upon such basis of valuation and upon the faith of the contracts existing between your orator and said city of Cleveland.

XXVIII. Upon information and belief, your orator alleges that each and all of the properties of the constituent companies
237 which formed your orator were purchased and acquired by such companies at the lowest practicable prices, and that the actual cost in money to the constituent companies and your orator of said properties, which now comprise your orator's investment, exceeded more than $5,500,000.00; and, upon information and belief, your orator alleges that the cost to such constituent companies of the several properties represented an investment made in good faith by your orator and the owners of said property before said consolidation, upon which, for a long series of years, absolutely no profit at all was realized, and that, computing the principal of said investment at 6% interest per annum, the amount thereof aggregates more than eight millions of dollars, the amount of your orator's authorized capital stock; and your orator says that, in ordinary business fairness and legal justice, it is entitled to earn reasonable and fair dividends and returns upon said amount in the operation of its railway system, and that, in any event, returns to your orator, to be reasonable and fair, should not be less than a sum sufficient to provide for the payment of necessary operating expenses, including paving, taxes, reasonable maintenance and improvements, interest upon its bonded indebtedness, annual depreciation, and the establishment of a sinking fund to provide for the indemnity of the stockholders against loss at the expiration of the franchises of said company, and such dividend upon its capital stock as it can reasonably earn under the existing rates of fare provided for in its said several contracts with the defendant, The City of Cleveland.

XXIX. Your orator further shows that the growth of the city of Cleveland will hereafter from time to time require extensions of

your orator's lines of railway, as well as improvements in the operation of the same; that improvements in the operation of elec-
238 tric railways, being constantly made, necessitate frequent changes in the methods thereof and the purchasing of new and improved equipment and appliances, and that in order to maintain said railway property in a proper state of efficiency and keep pace with growing improvements and invention, it will be necessary to expend large sums of money in renewals, changes in machinery and appliances, in addition to the amount already represented by the outstanding stock and bonds of your orator.

XXX. Your orator says that the rate of fare which has heretofore prevailed and which is provided for by your orator's existing ordinances and contracts, to-wit: a cash fare of five cents and the sale of tickets good for passage at the rate of eleven for fifty cents and twenty-two for one dollar, is no more than a fair and reasonable charge for the service rendered, and your orator alleges that the volume of its business will not be materially increased by virtue of the operation of said ordinance of October 17, 1898, in reducing the fare as aforesaid, and that there will be no compensation whatever to your orator for such reduction of fare by way of increased business.

XXXI. Your orator shows that all of its property was acquired, built, reconstructed, and improved upon the best obtainable prices and terms and conditions, and that said lines of railway have been at all times, and are now, operated by your orator as economically as practicable, so that the operating expenses have been and are as reasonable and low in amount as they could be made by economical management; that the services of officers and employés of said company have been secured as cheaply as practicable for good service, and it has no more of such officers and employés than are necessary to conduct its business in an efficient and proper manner. Your orator has at all times yielded to public de-
239 mand for increased and improved railway service, and, by extending said system through various portions of the city, including outlying and sparsely settled districts, the operation of several lines of your orator's railway, while a great benefit to the city, is and has been carried on without profit to your orator, and, in some instances, at a loss, greatly increasing the expense of operation of said system; that the extensive scale upon which your orator is required to operate said road to meet the demands and requirements of the city and its citizens constantly requires large amounts for improvements and extensions, and your orator alleges that it is now giving, and has at all times during its operation of said railway properties given, to the people of Cleveland a modern, improved, and well-conducted railway service, and that the prices which it is charging therefor are just and reasonable.

XXXII. Your orator shows that said ordinance of October 17, 1898, by which it is so undertaken to reduce the fare which your orator is entitled to charge as aforesaid, is void, because contrary to and in violation of the Constitution of the United States; that said

ordinance, as hereinbefore shown, if enforced or put into operation and effect, does and will deprive your orator of its property without due process of law, and will take, and have the effect of taking, the property of your orator for public use without compensation,—in contravention and violation of the Constitution of the United States, and especially section 1 of article 14, of the amendments to the Constitution of the United States.

XXXIII. Your orator further shows that, before it could at law demonstrate the invalidity of said ordinance by adjudication upon the same, a multiplicity of suits would ensue, and great inconvenience and conflict and trouble would arise from the refusal of your orator to recognize the validity of said
240 ordinance; that said ordinance will go into effect by its terms on November 1st, 1898, the expiration of the ten days' legal publication thereof required, unless said City of Cleveland be restrained therefrom by this court; and your orator will be compelled to submit to and carry out said ordinance unless the defendant be so restrained, and that if your orator should refuse to submit to and comply with said ordinance, in the absence of an injunction restraining its enforcement, the city, through its mayor, common council, and law department, with their employés and representatives, will, as your orator is informed and believes and alleges, proceed to enforce said ordinance and put the same into immediate effect, and compel your orator to comply therewith by taking steps and measures to forfeit or attempt to forfeit the charter, franchises and privileges so owned by your orator, for alleged violation of said ordinance of October 17, 1898, and institute, or cause to be instituted, suits or other proceedings against your orator, its officers, conductors, or agents, with the design of putting said ordinance into operation and effect, and of compelling your orator, its officers, conductors, or agents to accept such cash fare of four cents and to sell tickets, good for passage upon its cars, at the rate of seven for twenty-five cents; and upon your orator's refusal so to do, will make complaints and charges of violation of said ordinance and prosecute and institute proceedings to forfeit the charter, franchises, and privileges of your orator, and to annul its corporate existence, for alleged violation of said ordinance. Your orator says that an attempted enforcement of said ordinance would result in personal conflicts and altercations between passengers and conductors, with consequent breaches of the public peace and arrests and probable disturbance, and that great and permanent loss of business and good-
241 will would follow from such conflicts and disturbances; that a multiplicity of suits would arise on the part of the defendant city and its citizens and passengers on the roads of your orator, in different courts at the same time, and your orator will be put to great expense and trouble and loss in defending suits in various courts, leading to uncertainty or complications as to the rights of the said city of Cleveland and your orator in the premises;

that public interest and welfare and the rights of your orator require the trial and adjudication of such rights and duties in one for-m, and that, in equity and good conscience, your orator should not be subjected to the great loss, expense, inconvenience, and damage to which it will be subjected by the enforcement, or attempted enforcement, of said alleged ordinance; and your orator says that it has no adequate remedy at law to protect itself against the enforcement of said ordinance.

XXXIV. In consideration whereof, and inasmuch as your orator is without remedy at law in the premises, and can have adequate relief only in a court of equity, to the end, therefore, that the defendant herein may answer the several matters and things hereinbefore set forth, and that this court may decree that said ordinance of said city entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, is null and void and of no effect with respect of your orator, and that said ordinance and the change of fare provided thereby and the provisions thereof are unreasonable, unfair, unconstitutional, and void, your orator prays that the City of Cleveland and the, mayor and common council of said city, and all officers, agents attorneys, employés, representatives, and departments of said city and their respective agents, representatives and em-
242 ployés, and the director of law of said city and his associates and assistants and agents, and their respective successors in office, be perpetually enjoined, restrained, and prohibited from putting said alleged ordinance into effect, and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding against your orator or any conductor or employé, or any officer, representative or agent of your orator, the object or purpose of, or relief sought by, said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel your orator or any officer, representative, conductor or agent of your orator to accept the cash fare provided for in said ordinance, or to sell tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof, and from instituting or prosecuting any action or proceeding for violation of said alleged ordinance or any part thereof, and from proceeding with or continuing any action or proceeding for violation of said alleged ordinance or any part thereof; *and from proceeding with or continuing any action or proceeding for violation of said alleged ordinance or any part thereof*, whether complaint be made or said action be instituted by or on behalf of said City of Cleveland or any other person; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any fine, penalty or forfeiture for violating said

ordinance or any part thereof; and from bringing any suit, action, or proceeding for the purpose of vacating the charter or annulling the existence of your orator as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof, or any of its provisions.

And your orator prays that, in the meantime and during
243 the pendency of this suit, said City of Cleveland, the mayor and the common council of said city, and all officers, agents, employés, representatives, and departments of said city and their respective agents, representatives, and employés, and the director of law and his assistants, representatives, agents and employés, be enjoined and restrained as hereinbefore prayed, and that your orator may have such other and further relief as the nature of the case may require and as to equity may appertain.

XXXV. May it please to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this honorable court, directed to the said defendant, The City of Cleveland, commanding said defendant to appear in this court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND CITY RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

SQUIRE, SANDERS & DEMPSEY,
Counselors and Solicitors.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

C. F. Emery, being duly sworn, says that he is vice president of The Cleveland City Railway Company, the complainant in the foregoing amended bill of complaint; that he makes this affidavit as such officer on behalf of the said company; that he has read the said amended bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters and things therein stated upon information and belief,
244 and as to those matters, he believes them to be true.

C. F. EMERY.

Sworn to before me by the said C. F. Emery and by him subscribed in my presence this 3rd day of May, A. D. 1900.

[SEAL.] CLARENCE E. SANDERS,
Notary Public.

Endorsements on amended bill of complaint: No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Amended bill of complaint. Filed May 5, 1900 Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

245 *Answer to Amended Bill of Complaint.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. Answer to Amended Bill of Complaint.

The defendant, The City of Cleveland, now and at all *ti* times hereafter, saving and reserving to itself all and all manner of benefit of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto or to so much thereof as this defendant is advised, it is material or necessary for it to make answer to, says and avers:

It admits that the complainant and defendant are citizens of the State of Ohio, that the complainant is a corpora- organized and existing under the laws of the State of Ohio, ow-ing and operating various lines of street railway in the city of Cleveland, and that the defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and that in respect to the matters and things set forth in the amended bill of complaint as to the ordinances affecting the complainant, this defendant acts and acted under delegated power from the legislature of the State of Ohio, but defendant avers that defendant so acting under such delegated power as aforesaid, could not and did not bind itself by any of the provisions of any of the said ordinances affecting complainant, save and except in so far as the defendant had been duly delegated the power by the legislature of the State of Ohio, to so bind itself by such provisions of such ordinances.

246 Further answering paragraph one of said amended bill, defendant while admitting that acting or assuming to act under delegated power from the legislature of the State of Ohio, it has passed and adopted ordinances granting to complainant and its predecessors in interest, the right to construct and operate various lines of railway in said city denies that the alleged ordinances set forth in said amended bill, constitute contracts between complainant and defendant as in said amended bill of complaint alleged, and defendant denies that all of the provisions of each and all of said alleged ordinances were within the powers of defendant, delegated

to it by the legislature of the State of Ohio, but defendant avers that some of the provisions of said ordinances were beyond the delegated power of defendant, as hereinafter more specifically set forth, and this defendant further answering avers that such provisions of each and all of said alleged ordinances, as were not within the powers of this defendant, so delegated to it by the legislature of the State of Ohio, were and are null and void as against this defendant, and form no part of any contract or contracts between the complainant and the defendant.

Defendant answering paragraph two of said amended bill admits that the amount in controversy in this action, amounts, exclusive of interest and costs, to the sum of five thousand dollars, but denies that this is a controversy arising under the Constitution of the United States. It admits that complainant seeks relief against defendant by the amended bill by reason of an attempt on the part of the defendant to enforce against complainant, an ordinance of the city of Cleveland having all the effect and force of a law of the State of Ohio, but this defendant denies that the said ordinance impairs in any contract rights of complainant or any other of its rights,
247 or that the operation of said ordinance, if permitted, would take from complainant its property or any part thereof, without due process of law, or deny to complainant the equal protection of the law in *in* contravention or violation of the Constitution of the United States, or of section 1 of article 14 of the amendments to said Constitution, of section 10 of article 1 of said Constitution, or of any part of said Constitution, of the amendments thereto, or in any other manner.

Defendant answering paragraph three of said amended bill admits that the complainant is a consolidated railway company formed in 1893 by the consolidation of the two constituent companies named in said paragraph three of the amended bill.

Defendant says that it is not informed save by said amended bill, of the amount of the capital stock of the complainant, or how much thereof is issued, or as to the amount of the bonded indebtedness of complainant, but on its belief denies that the capital stock of complainant is eight million dollars, and denies that $7,600,000 of the same is or has been issued; it denies that complainant has outstanding a bonded indebtedness, secured by a mortgage on one of its constituent lines amounting — $2,026,000.

Defendant avers that if such capital stock and mortgage indebtedness, to the amount named in said amended bill, to-wit: $7,600,000 and $2,026,000 respectively, have been issued, as averred by said amended bill, that the same does not represent money, which has been invested in complainant's property, and defendant alleges that the aggregate amount of said capital stock and bonded indebtedness is far in excess of complainant's actual investment in money in its property, and far in *the* excess of the value of its property either at the present time or at any time since complainant's organization; and defendant further says that said aggregate amount is *so* far in ex-

cess of the sum of the values of the property and actual money
248 investment of the two constituent companies, which in 1893, formed, by consolidation the complainant company.

Defendant further avers the fact to be that a large amount, to wit: more than two-thirds of complainant's capital stock and bonded indebtedness is fictitious and watered and is not based upon any value whatever, or upon any investment whatever.

It admits that by such consolidation, the complainant became and is possessed of all the rights, franchises, privileges and property theretofore possessed by said constituent companies and each of them, but it avers and says that, by such consolidation, the complainant succeeded to, assumed, and thereby became and is, subject to all the duties, obligations, liabilities, conditions, and limitations to which both or either of said constituent companies were and had been subject, and which were and had been imposed upon them or either of them prior and up to the time of such consolidation.

Defendant in answer to paragraph four of said amended bill, says each of said constituent companies so consolidated, was operating its respective lines of street railway under ordinances passed by the council of the city of Cleveland, acting or assuming to act in pursuance of power delegated to it by the legislature of the State of Ohio, and that the said ordinances were accepted by the said railroad companies severally, but defendant denies that said ordinances became or were contracts binding upon the city of Cleveland.

Defendant avers that some of the provisions of said ordinances were and are beyond the power delegated by the legislature of the State of Ohio to said defendant city, and the same were, have been and are in terms expressly forbidden by the laws of the State of Ohio, and that all of the said provisions not so authorized or
249 so forbidden were and are *ultra vires*, illegal and void as hereinafter stated.

Defendant admits all of the allegations contained in paragraph five of said amended bill of complaint.

Defendant for answer to paragraph six of complainant's amended bill, admits that by the terms of the consolidation in 1885 of the West Side Street Railroad Company and the Woodland Avenue Railway Company, said consolidated company, known as the Woodland Avenue & West Side Street Railroad Company became vested with all and singular the property, rights, privileges and franchises of said two constituent companies. But defendant avers that by such consolidation the said The Woodland Avenue and West Side Street Railroad Company succeeded to, assumed and thereby became subject to all the duties, obligations, liabilities, restrictions and limitations to which each or either of said constituent companies were or had been subject *to*, or which were or had been imposed upon them or either of them, or upon any of the lines of either, theretofore operated by either of them, and assumed and became subject, as well, to all the conditions, obligations, liabilities, restrictions and limitations, imposed upon the said The Kinsman Street Railroad Company prior

to its purchase by the said The Woodland Avenue Railway Company.

And for answer to paragraph seven of said amended bill defendant admits that the St. Clair Street Railroad Company and the Superior Street Railroad Company were each corporations organized under the laws of the State of Ohio, and prior to the formation of the Cleveland City Cable Railway Company, owned and operated lines of street railway in the city of Cleveland.

And defendant admits that the Cleveland City Cable Railway Company was the successor by purchase to all the property, rights, privileges and franchises of the said The St. Clair Street Railroad Company and the said The Superior Street Railroad Company,
250 but defendant avers that the said The Cleveland City Cable Railway Company, by virtue of said purchase and succession, also became and was subject to all the conditions, obligations, liabilities, limitations and restrictions imposed upon the said companies or either of them, and to all the conditions, obligations, liabilities, limitations and restrictions imposed upon all or any line of either of said constituent companies, prior to such pur— and succession.

And defendant in answer to paragraph eight of said amended bill, admits that by virtue of the consolidation of the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company in 1893, the complainant company became vested with all the property, rights, privileges and franchises of said constituent companies and each and all of them as alleged in said paragraph eight of said amended bill.

But defendant avers that by virtue of said consolidation in 1893, the complainant assumed, and thereby became and is subject to the conditions, obligations, liabilities, restrictions and limitations to which the said The Woodland Avenue & West Side Street Railroad Company, The Cleveland City Cable Railway Company, The Woodland Avenue Railway Company, The West Side Street Railroad Company, The Superior Street Railroad Company, The St. Clair Street Railroad Company and The Kinsman Street Railroad Company or either of them, had been subject prior to such consolidation of 1893, and that by virtue of such consolidation in 1893, the complainant assumed and thereby became and is subject to all the conditions, obligations, liabilities and restrictions which had been imposed upon each or either of said last named constituent companies, or upon each or any line of either of said constituent companies.

Defendant for answer to paragraph nine of said amended bill, admits that prior to year 1885, when the consolidated company known as the Woodland Avenue & West Side Street Rail-
251 road Company was organized, the two constituent companies which formed such consolidation, were independent lines of street railway, the one operating lines of street railway chiefly upon the east side of the Cuyahoga river, and the other upon the west side

of said river and that each of said companies acted under and by reason of franchises from the city of Cleveland independent of the other, and that there *were* no exchange of traffic between said companies by way of transfers, but defendant denies that said companies or either of them acted under or were possessed of any contract from or with the said city of Cleveland.

Defendant for answer to paragraph ten of said amended bill denies that at the time of the consolidation of the said The West Side Street Railroad Company — the said The Woodland Avenue Railway Company, said West Side Street Railroad Company had the right by ordinance of June 5, 1882, or by any other ordinance to charge a cash fare of five cents for each passenger carried for the term of twenty-five years from February, 1883, or for any other term of time, to the extent that the city of Cleveland, through its city *of* council did not then and at all times previous and thereafter have the right to diminish or reduce the rate of fare to be by said company charged, and defendant avers that the city council of defendant at all times reserved and had the right to so diminish or reduce the rate of fare to be so charged.

Defendant further answering said paragraph ten of said amended bill, admits that said paragraph ten contains a true copy of the ordinance passed June 5, 1882, and defendant denies that said Woodland Avenue Railway Company was operating its line of road under several grants from the city of Cleveland, as stated in said paragraph ten, but admits the passage of the ordinance of August 25, 1879, as alleged and set out in paragraph five of said amended bill of complaint and referred to in said paragraph ten; and de-
252 fendant avers that upon the passage of said ordinance of 1879; the said The Kinsman Street Railroad Company accepted the same and thereafter operated its line of street railway thereunder; that its line of street railway as it then existed commenced on Superior street at the intersection of Water street in said city of Cleveland, and run thence to and around the southwest corner of Monumental square to Ontario street; thence to Woodland avenue and thence upon and along and *upon* said Woodland avenue to Madison avenue. Defendant avers that the Kinsman Street Railroad Company continued to maintain and operate its said line of street railroad under and by virtue of the provisions of said ordinance of August 25, 1879, until the same was purchased by the Woodland Avenue Railway Company about the year 1880; and that the said Woodland Avenue Railway Company and the said West Side Street Railroad Company were consolidated and thereby formed the Woodland Avenue & West Side Street Railroad Company; that immediately upon such consolidation in 1885, the said The Woodland Avenue & West Side Street Railroad Company, began and thereafter continued, to maintain and operate the said line of railway, with its extensions under and by virtue of the provisions of said ordinance of August 25, 1879, until the year 1893, when the Woodland Avenue & West Side Street Railroad Company

and the Cleveland City Cable Railway Company consolidated and thereby formed The Cleveland City Railway Company, the complainant herein; and that immediately upon such last named consolidation in 1893, complainant began to maintain and operate the said line of railway with its extensions, under and by virtue of said ordinance of August 25, 1879.

Defendant further answering said paragraph ten of complainant's amended bill admits the passage of the ordinance of May 14, 1883, and that the said ordinance was in the words and figures as alleged in said amended bill. But defendant denies that by said or-
253 dinance said city and said Woodland Avenue Railway Company entered into a new contract; and it denies that in and by said ordinance said company agreed to new conditions or requirements.

Defendant denies that in or by said ordinance the said The Woodland Avenue Railway Company was granted the right to charge one fare of five cents over its entire line, or that in or by said ordinance it was granted the right to charge a fare of five cents at all, and avers that the fare or rate of fare is neither fixed nor referred to in said ordinance, except that it is provided that but one fare shall be charged between the easterly and westerly terminus of said company's main line as extended.

And further answering paragraph ten of said amended bill defendant says, that under and by virtue of the laws of the State of Ohio and the ordinances of the city of Cleveland, the rights, privileges and franchises of the Kinsman Street Railroad Company to maintain and operate its line of street railway were limited to expire within a certain specified period of time; that on the date referred to in said amended bill, to wit: August 25, 1879, said rights and franchises over the route described in paragraph seven of said amended bill, had nearly, if not entirely, expired; and without an extension or renewal of the period of the life of such rights and franchises the said The Kinsman Street Railroad Company would, at or about said date, have been compelled to abandon the maintenance and operation of its said line of railway, and would have been deprived of all the profits and emoluments accruing from the operation and maintenance of the same.

Defendant further answering says that by virtue of the laws of the State of Ohio, no ordinance, right or franchise to construct, maintain or operate a street railway in any municipal corporation can be given or granted until the council or other legislative body of such municipal corporation shall first advertise for and receive competitive bids for the construction, operation and mainte-
254 nance of the same, and that thereupon such right and franchises should only be granted to the person or corporation offering to carry passengers at the lowest rate of fare.

Defendant further says that the said Kinsman Street Railroad Company has avoided competition as to the rates of fare, provided by the law by reason of the fact that it had secured its original fran-

chises from the city prior to the passage of the act of the legislature of the State of Ohio providing for such competition, said act having been passed on the 26th day of March, 1866.

Defendant avers that the said Kinsman Street Railroad Company, for the purpose of securing an entirely new franchise and for the purpose of providing against the consequences of the expiration of the then existing franchises, and for the purpose of evading and avoiding the law providing for competitive bidding, and the granting of such franchises to the person or corporation proposing to carry passengers at the lowest rate of fare, applied to the council of the city of Cleveland for a renewal of its franchises under the provisions of the laws of the State of Ohio providing that the council of any city of the first or second grades of the first class might by ordinance renew any street railway grant or franchise at its expiration for a period not to exceed twenty-five years from the date of such grant or renewal of a grant, upon such terms and conditions as they may consider conducive to the public interests, and on the 25th day of August 1879, said council granted such renewal by ordinance of said date for a period of twenty-five years from the 20th day of September, 1879.

Defendant avers that thereafter the said The Kinsman Street Railroad Company and its successors heretofore named commenced and continued the operation of its lines of street railway under and by virtue of the provisions of said ordinance of August 25, 1879.

255 Defendant further answering says and avers that by the provisions of the act of the legislature of the State of Ohio, under which the said ordinances of August 25, 1879, was passed by the city council of defendant, it is provided that after the grant or renewal of a grant to any person or corporation to operate and maintain street railroad systems in any municipal corporation affected by said act has been made, the council shall not have the power, and by the terms of said act and the law of the State of Ohio, they were expressly prohibited from releasing the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant.

Defendant avers that neither the ordinance of May 14, 1883, nor any other ordinance either prior or subsequent thereto, released or was intended or understood to release, said company or its successors from any of the provisions of said ordinance of August 25, 1879; that neither the ordinance of May 14, 1883, nor any other ordinance waived, superseded, affected or diminished the right and power of the city of Cleveland to reduce the rate of fare reserved to it under the provisions of the ordinance of August 25, 1879, and that under and by virtue of the limitations imposed by the laws of the State of Ohio, the council of the city of Cleveland had no power to release the said The Kinsman Street Railroad Company or any of its successors from the operation of any obligation- or liabilities imposed by the terms of said ordinance, but on the contrary said council was

expressly forbidden so to do by the laws of the State of Ohio, and any such release is *ultra vires, illegal and void.*

Further answering defendant says that in and by said ordinance of May 14, 1883, said The Woodland Avenue Railway Company was granted the right to extend its tracks by building and additional track on Woodland avenue from the Cleveland & Pittsburgh
256 Railroad crossing, east to Corwin street that under and by virtue thereof said company constructed and operated such additional tracks from the Cleveland & Pittsburgh Railroad crossing easterly to Corwin street, and as an extension of its said line from Superior and Water streets to Madison avenue, being the line maintained and operated under the ordinance of August 25, 1879.

That said company constructed such extension for its own benefit, and sought and solicited the privileges of constructing the same from the council of the defendant city, on account of the increased traffic and patronage such extension would bring to it.

Defendant says that by the act of the legislature of the State of Ohio, by authority of which said ordinance of May 14, 1883, was passed, it is expressly provided that the charge for carrying passengers shall not be increased over the whole or any part of the main line so extended, or over the connections with existing lines by consolidation.

Defendant avers that by virtue of said act of the legislature and the law of the State of Ohio, and by the operation of law it became, and was, the duty of said Woodland Avenue Railway Company, after the construction of such extension, to give passengers one continuous ride for one fare over the whole or any part of its said line as extended.

That in so far as said ordinance undertook or may have undertaken to make a contract with said company, that passengers should be carried from one end to the other end of said line as thus extended, for one fare, the same is and was entirely without consideration moving to the city of Cleveland; and defendant avers that giving passengers one continuous ride for one fare over the whole or any part of its said line as thus extended, was no part of the consideration for which said extension grant was made, the same having been provided for by the laws of the State of Ohio.

Defendant for answer to paragraph eleven of complainant's
257 amended bill says, that it is not informed save by said amended bill as to the plan of the Woodland Avenue & West Side Street Railroad Company at the time of its organization and consolidation, and therefore on its belief denies all the allegations of said amended bill in reference to such plan, and demands proof thereof. It admits that the said paragraph eleven contains a true copy of the communication sent to the council of the city of Cleveland on the 9th day of February, 1885, by the said The Woodland Avenue Street Railroad Company and The West Side Street Railroad Company, that thereafter on the 16th day of February, 1885, the council of said city of Cleveland passed an ordinance set out in said

paragraph eleven, and that the said The Woodland Avenue & West Side Street Railroad Company duly accepted the terms and conditions of said ordinance.

Defendant further answering said paragraph eleven, denies that the said ordinance of February 1885, fixed the rate of fare to be charged upon such consolidated company's lines or any part thereof, and defendant denies each and every allegation contained in said paragraph eleven, not *not* herein expressly denied or admitted to be true.

And defendant further answering the matters and things in said paragraph eleven says, that by virtue of the laws of the State of Ohio in force at the time of said consolidation, to wit: on February 16, 1885, providing for the consolidation of street railway companies, it was the duty of the said The Woodland Avenue & West Side Street Railroad Company immediately upon and after such consolidation and by reason thereof, to give passengers a continuous ride over its entire line, as thus consolidated, for one fare not to exceed the maximum rate of fare charged over any of the lines of the constituent companies, prior to such consolidation.

Defendant further says that the said ordinance of February 16, 1885, did not fix nor did it attempt to fix the rate of fare
258 to be charged by said consolidated company over its lines, as consolidated or over any part of its said street railroad system; that in so far as said ordinance fixed or undertook or may have undertaken, to fix said rate or rates of fare, the same was *ultra vires*, illegal and void, for the reason that the terms and conditions of said consolidation in respect to the rate or rates of fare to be thereafter charged over any of the lines of street railway affected by said ordinance of consolidation, were fixed and regulated by operation of law, and resulted from such consolidation.

Defendant further says that said ordinance did not in any way surrender, waive, release or diminish, the rate of fare to be charged by said consolidated company over any of its lines of street railway, that the city council of defendant had no right or authority to attempt in any manner by ordinance or otherwise, to surrender, waive, release, or diminish such rate of fare, but that said city council was expressly forbidden by the laws of the State of Ohio from attempting so to do.

Defendant further says that especially and particularly was it beyond the power of said council and contrary to the express provisions of the laws of the State of Ohio, pertaining to such matters, for the said city council in any manner to attempt by said ordinance or otherwise, to surrender, waive, release, or diminish the right of the said city to reduce or diminish the rate of fare over its line formerly known as the Woodland Avenue line, which said Woodland Avenue line had been, was and still is, maintained and operated under and by virtue of the provisions of the ordinance of August 25, 1879, hereinbefore referred to, and which said ordinance is set out in full in complainant's amended bill of complaint. And

defendant says that notwithstanding any of the provisions of said ordinance of February 16, 1885, set out in paragraph eleven
259 of complainant's amended bill, each and all of the provisions of said ordinance of August 25, 1879, still remain and are in full force and effect.

Defendant for answer to paragraph twelve and thirteen of complainant's amended bill, admits that on April 8, 1887, the council of the city of Cleveland passed an ordinance in the words and figures set out in said paragraph twelve; and that said ordinance was duly accepted by said The Woodland Avenue & West Side Street Railroad Company, and said ordinance provided for the laying of an additional track in Franklin avenue, and for an extension of said company's line of railway in said Franklin avenue.

And defendant admits the passage of the ordinance of August 12, 1887, which said ordinance was in the words and figures as set out in paragraph thirteen of complainant's amended bill; that said ordinance related to the extension of its tracks in Franklin avenue from Kentucky street to Waverly avenue to connect with its line of railway on Bridge street.

And defendant further admits that said ordinance of August 12, 1887, was duly accepted by the said The Woodland Avenue & West Side Street Railroad Company. But defendant denies that either said ordinance of April 8, 1887, or said ordinance of August 12, 1887, formed a new contract between said company and defendant.

And further answering the matters and things contained in said paragraph twelve and said paragraph thirteen of complainant's amended bill, defendant denies each and every allegation contained in said paragraph twelve and said paragraph thirteen, not hereinbefore or hereinafter expressly denied or admitted to be true.

And further answering defendant says that the two proposed extensions to which the said ordinance of April 8, 1887, and the said ordinance of August 12, 1887, respectively related, were con-
260 structed, maintained and operated as extensions of said company's West Side line, formerly owned by the West Side Street Railroad Company; that neither of said extensions were extensions of that part of the Woodland Avenue & West Side Avenue Street Railway Company's line, which was or had been operated or maintained under and by virtue of the ordinance of August 25, 1897, hereinbefore referred to.

And further answering the matters and things contained in said paragraph twelve and said paragraph thirteen, defendant avers that neither said ordinance of April 8, 1887, nor said ordinance of August 12, 1887, in any manner fixed the rate of fare to be charged by said company upon any of its lines of street railway, and defendant avers that the city council of the city of Cleveland by the passage of said ordinance of April 8, 1887, and August 12, 1887, or by the passage of either of said ordinances, did not and could not, in any manner, surrender, waive, or diminish, any of the rights of the city of Cleveland under the ordinance of August 25, 1879, nor in any

manner release said company from the operation of any of the provisions of said ordinance of August 25, 1879.

That neither said ordinance of April 8, 1887, nor said ordinance of August 12, 1887, did or does constitute a new contract or agreement between the said The Woodland Avenue & West Side Street Railroad Company and the said city of Cleveland, in respect to the rate of fare to be charged by said company over any of its lines; that under and by virtue of the laws of the State of Ohio, immediately upon such extensions being constructed, it became and was the duty of the said The Woodland Avenue & West Side Street Railroad Company to give passengers a continuous ride over the whole or any part of its lines as thus extended for one fare.

And defendant further answering said paragraph twelve and said paragraph thirteen says and avers, that all of the provisions
261 of the said ordinance of August 25, 1879, in respect to the line of street railroad commonly known as the Woodland Avenue line (formerly Kinsman street), remain and are in full force and virtue in law, notwithstanding the passage of said ordinance of April 8, 1887 and said ordinance of August 12, 1887, or either of them.

Defendant for answer to paragraph fourteen of said amended bill, admits that on June 20, 1892, the council of the city of Cleveland duly passed the ordinance set out in said paragraph fourteen, permitting the Woodland Avenue & West Side Street Railroad Company to construct an additional track in Kinsman street from Woodland avenue southeasterly to the city limits, and that said company duly accepted said ordinance.

Defendant denies that said ordinance of June 20, 1892, gave to said company any new or additional contract rights, or that said ordinance was a new or additional contract between the city of Cleveland and the said The Woodland Avenue & West Side Street Railroad Company, or that any new or additional contract was made in or by said ordinance, or the passage thereof.

And defendant further answering denies each and every other allegation contained in said paragraph fourteen, not herein denied or admitted to be true.

And further answering the matters and things contained in said paragraph fourteen, defendant avers that the additional track provided for by said ordinance was constructed, maintained and operated as an extension of the line of street railway maintained and operated under and by virtue of the provisions of the ordinances of August 25, 1879, hereinbefore referred to.

Defendant avers that neither any of the provisions of the said ordinance of June 20, 1892, nor any of the provisions of any other ordinance, did or could surrender or waive the right of the said city of Cleveland, at any time, to reduce or diminish the
262 rate of fare to be charged by said company on or over its Woodland Avenue line, which said right to so reduce or diminish, was reserved to the said city under and by virtue of the ordinance

of August 25, 1879; that the council of the said city of Cleveland had no power to surrender, or waive such right, or to release said company from any of the provisions or conditions of said ordinance of August 25, 1879, but defendant avers that the city council at all times was and is expressly forbidden by the laws of the State of Ohio from attempting to waive or surrender any of the rights of defendant under said ordinance of August 25, 1879. And defendant says that in so far as the said ordinance of June 20, 1892, undertook or may have undertaken to waive, release or surrender any of the rights of said city under the ordinance of August 25, 1879, and especially in so far as said ordinance undertook or may have undertaken to waive, release or surrender the right secured to said city under said ordinance of August 25, 1879, to at any time reduce or diminish the rate of fare to be charged over the said Woodland Avenue line of street railway, in so far the said ordinance of June 20, 1892, was and is *ultra vires*, illegal and void.

Defendant further says that under and by virtue of the provisions of the law of the State of Ohio, in force at the time of the passage of said ordinance of June 20, 1892, it became and was the duty of the said The Woodland Avenue & West Side Street Railroad Company, to give passengers a continuous ride over all or any part of its said Woodland Avenue line, as extended by said ordinance of June 20, 1892, for one fare, and that any attempt to fix the rate of fare under or by virtue of said ordinance of June 20, 1892, was wholly without consideration, illegal and void.

For answer to paragraph fifteen of complainant's amended bill, defendant denies each and every allegation contained in said paragraph fifteen not hereinbefore or hereinafter expressly denied or admitted to be true.

263 And further answering said paragraph fifteen, defendant avers that each and every one of the extensions, at any time, constructed by the said The Woodland Avenue & West Side Street Railroad Company, were constructed by it for its benefit on account of the increased traffic and business that each of such extensions would and did naturally and necessarily bring to said company, thereby greatly increasing its income and profit.

For answer to paragraph sixteen of complainant's amended bill, defendant admits that prior to May, 1893, the Cleveland City Cable Railway Company owned and operated lines of street railway upon Superior street, operated by cable power, and lines upon St. Clair street, operated by horse power, and that by virtue of grants from the city of Cleveland, said company was then authorized for a period of years to operate its said lines, but defendant denies that said company was authorized by grants from the city of Cleveland or otherwise, to charge throughout the entire term of its grants, or for any time whatever, a cash fare of five cents upon each or any of its said lines, to that extent that the city of Cleveland acting through its city council, did not at all times have the right to reduce or diminish the rate of fare to be charged by the said The Cleveland

City Cable Railway Company over any of its lines of street railway, which said right to so reduce the said rate or rates of fare, defendant avers it at all times had.

Defendant admits that the ordinance- or grants under which the Cleveland City Cable Railway Company operated its said lines prior to May 13, 1893, are and remain still in force.

Further answering the matters and things contained in said paragraph sixteen, defendant denies each and every allegation in said paragraph sixteen contained, not hereinbefore or hereinafter expressly and specifically denied or admitted to be true.

264 Defendant further answering says, that prior to March 22, 1889, the said The Woodland Avenue & West Side Street Railroad Company was exceedingly desirous of changing the street car service upon its lines from animal to electric motive power for the reason, among other reasons, that the operation of such lines by electricity instead of by animal power would be less expensive to said company, and that said company would make a large saving thereby and would be able to furnish service to the citizens of the city of Cleveland at a much less expense, thereby greatly increasing its profits; that the operation of said lines by electricity would be the means of providing a more rapid mode of transit, and enable said company to carry more people in a shorter space of time and at much less expense, and thereby greatly increase the patronage and profits of said company; and inasmuch as the ordinance under which said company was then operating its lines of street railway, permitted only the use of animal motive power, said company solicited from the council of said city the passage of an ordinance authorizing it to use electricity as a motive power, and that thereupon in pursuance of such solicitation, and without any consideration therefor, the city passed an ordinance granting to said company the right and license to equip and operate said lines with electricity, and to erect the necessary poles, wires and equipments for the purpose of generating and using such electricity, which said ordinance is in the words and figures following, to wit:

"An ordinance granting the Woodland Avenue & West Side Street Railroad Company the right to use electricity in operating its street railroad.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Woodland Avenue & West Side Street Railroad Company is granted permission to operate its entire line of street
265 railroad as the same now exists, with any and all extensions that may hereafter be made thereto, by electricity as a motive power, using such electric plant in the public streets as shall be acceptable to the board of improvements, and, for such purposes, said company shall have the right to erect and maintain poles, wires, fixtures or conduits and all other appliances or appurtenances, that

in the opinion of said board shall be found necessary to successfully operate its street railroad by electricity.

SEC. 2. In the erection of poles and the placing of wires or conduits, and in the use of any and all other appliances or appurtenances that may be found necessary to operate its line by electricity, before the improvement shall be made upon any or all of its lines for the purpose of using electricity, a plan of the same, showing all poles, wires and other appliances or appurtenances that said company shall desire to use, shall be submitted to and approved by the board of improvements, said board having the right to fix the distance at which poles should be apart the height of all poles and wires, and the size and location of all conduits, and to regulate the places within the streets where any and all appliances or appurtenances shall be located, and to establish such regulations with reference to the public safety, protection, painting and sightliness of the poles and appurtenances as the said board of improvements shall determine.

SEC. 3. The running of cars on any part of the lines of such company may be suspended by the board of improvements for such reasonable time as may at any time be necessary on account of the construction or repairs of streets, or sewers, or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid the same shall be taken up and relaid at the expense of said railroad company whenever required by said board.

266 SEC. 4. Said railroad company shall at all times hereafter defend, keep harmless and indemnify the city of Cleveland from any and all damages, lawful claims and demands for injuries to persons or property, costs and expenses to which said city may be subjected, or made liable by any proceeding at law or in equity or otherwise growing out of the grant of the privileges in this ordinance granted, or out of the exercise and enjoyment of the same by said company.

SEC. 5. Said company shall at all times conform to such rules and regulations as may from time to time be made by the council and approved by the board of improvements as to the rate of speed it may run its cars, and while the cars of said company are in motion, or about to start warning shall be given by bell or otherwise, to notify persons of any immediate or approaching danger.

SEC. 6. That the city reserves to itself the right to grant to any other person or persons, company or corporation, a joint use for street railroad purposes of the tracks poles, wires, electric currents and other appliances herein provided for upon such portion of said Woodland Avenue and West Side Street Railroad Company's lines from the intersection of Pearl and Lorain streets, northerly along Pearl street to Superior Street viaduct; thence along the Superior Street viaduct to Water Street; thence along Superior street to Ontario street; thence along Ontario street to southerly line of Factory street, as is free territory under existing grants upon such terms and

conditions as to occupation and compensation as the city council may deem just and reasonable in case such companies should fail to come to such agreement by and between themselves.

SEC. 7. The grant herein made shall be in force from and after the date of the passage and legal publication of this ordi-
267 nance and the written acceptance of the same by said company and said company shall have the right to maintain and operate its present line and any and all extensions until the expiration of the present grant of said company, to wit: the 10th day of February, 1908.

SEC. 8. Nothing contained in this ordinance shall in anywise release or relieve said company from compliance with all other ordinances relating to street railroads now in force, or which may hereafter be adopted by the city council, including all amendments hereto and thereto.

SEC. 9. Said railroad company shall in writing accept the permission and privileges hereby granted and agree to comply therewith.

SEC. 10. This ordinance shall take effect and be in force from and after its passage and legal publication and the payment to the city auditor by the said company of the expense of publication."

Defendant further says that the said The Woodland Avenue & West Side Street Railroad Company duly accepted in writing the terms of the said ordinance and that said ordinance contained no provision whatever relating to the fares to be charged by said company over any part of its line or lines of street railway, the same being remitted to the provisions of ordinance then in force, and as respects its Woodland Avenue line, to the provisions of the ordinance of August 25, 1879.

Defendant for answer to paragraph seventeen of said amended bill, admits the formation of the complainant company in 1893 by the consolidation of the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company; admits that said paragraph seventeen contains a true copy of the communication sent to the city council of the city of Cleveland on the 13th day of May, 1893 by the said The Woodland Avenue & West Side Street Railroad Company and the said The Cleve-
268 land City Cable Railroad Company, and that said paragraph seventeen contains a true copy of a resolution adopted by the said city council of the city of Cleveland on the 15th day of May, 1893. But defendant denies that at the time of such consolidation in 1893, the companies thus consolidating each or either had any grants or contracts, by ordinance or otherwise, which authorized them or either of them to charge a cash fare of five cents over any of its said lines, to such extent that defendant did not then and at all times, retain and have the right to reduce or diminish the said rate of fare to be charged upon all or any of the lines of street railway of either of said companies.

Defendant denies that since the adoption of the resolution of May

15, 1893, complainant has continued the operation of its various lines of street railway as therein contemplated and required.

Defendant admits that complainant has continued to charge a cash fare of five cents for each passenger over its lines of street railway as consolidated, but defendant denies that complainant in thus charging a cash fare of five cents, has complied with each or any of the different contracts between complainant and defendant.

Defendant denies that the ordinances under which complainant and its predecessors in interest operate its various lines of street railway amount to or are contracts, and defendant avers that complainant, in thus charging a cash fare of five cents, as aforesaid, has acted in violation of the ordinances under which complainant claims its contract rights.

Defendant admits that complainant, at or soon after the adoption of said resolution of May 15th, 1893, adopted and put in force the system of transfers contemplated in said resolution, and has kept on sale tickets at the rate of eleven for fifty cents or twenty-two for one dollar, and that complainant has ever since said consolidation been carrying passengers, and is now so doing, over the entire sys-
269 tem with the system of transfers provided for in said resolution, for one cash fare of five cents or tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar.

Defendant further answering, denies each and every allegation contained in said paragraph seventeen of said amended bill, not herein specifically and expressly denied or admitted to be true.

And defendant further answering the matters and things contained in said paragraph seventeen, says that the laws of the State of Ohio pertaining to the consolidation of street railroad companies and systems, provide that whenever such consolidation is made there shall be no increase of the existing rate of fare, by reason of such consolidation, nor shall any fare be charged upon any of the separate routes as thus consolidated in excess of the fare charged on such separate routes prior to the consolidation thereof.

And defendant further says that by the said laws of the State of Ohio, it is provided that the fare charged for one continuous route or ride over all such consolidated lines, shall not exceed the maximum fare charged over any one of said lines prior to such consolidation.

Defendant further answering says that complainant was organized as a consolidated company under and in pursuance of the laws of the State of Ohio, and by reason of its organization, became and was, and now is, subject to all the conditions and limitations imposed by the laws of the State of Ohio; that the application of complainant to the council of the city of Cleveland, and the said resolution of May 15, 1893, set out in complainant's amended bill, neither enlarged or diminished the rights privileges, duties or lia-
bilities of either the complainant company or the city of
270 Cleveland. That the adoption of said resolution was and is null and void, serving absolutely no purpose whatsoever.

That the duty of complainant to give passengers one continuous ride over all such consolidated lines for one fare, not to exceed the maximum fare charged over any one of said lines prior to such consolidation, was fixed by the statutes of the State of Ohio, and by operation of law became obligatory upon the complainant, immediately upon the taking place of such consolidation, and that in no way or manner did any contractural relations between defendant and complainant grow out of the said passage of said ordinance, and that its passage was absolutely without consideration moving to the city of Cleveland.

And defendant further says, that the right of the city, acting through its city council, to reduce or diminish the rate or rates of fare over any or all of complainant's lines of street railway, was not waived, impaired or affected by the passage of said resolution of May 15, 1893, or by any other resolution, order, ordinance or act of the council of said city, or otherwise.

And further answering defendant admits that whatever grants or ordinances the constituent companies which formed complainant, were operating under at the time of said consolidation, are still in force.

Defendant further answering the matters and things contained in said paragraph seventeen, says that each and all of the various ordinances herein referred to, relating to the Kinsman Street Railroad Company, the Woodland Avenue Railway Company, the West Side Street Railroad Company, the St. Clair Street Railroad Company, the Superior Street Railroad Company, the Cleveland City Cable Railway Company, the Woodland Avenue and West Side Street Railroad Company and the Cleveland City Railway Company, contained conditions and provisions to the effect that said com-
271 panies should abide by, and perform and be subject to, all and singular the conditions of all general ordinances of the city of Cleveland, relating to street railroad-; and it was expressly provided in each and all of said ordinances, and agreed to by each respective company, that each respective company should abide by, perform, and be subject to all and singular the conditions of all the general ordinances of the city of Cleveland relating to street railroads; and it was expressly provided in each of said grants and ordinances that the said companies should abide by and be subject to, and perform all and singular the further and future orders and ordinances of the council of the city of Cleveland, in relation to their said railroads and the operation thereof; and that complainant and its predecessors in interest, accepted each and all of the said ordinances, and each and all of their grants, subject to the said provisions and conditions, and that they and each of them agreed to abide by and conform to, the further and future orders and ordinances of the city council of the city of Cleveland, with reference to their said roads and grants.

And for answer to paragraph eighteen of said amended bill defendant denies that no one of the grants under which complainant

is operating its various lines of street railway expires before the year 1908.

It denies that under the said ordinances, or otherwise, complainant has the right to charge a cash fare of five cents during the period covered by said grants, or during any period whatsoever. And defendant further answering said paragraph eighteen, avers that under and by virtue of the provisions of the various ordinances under which complainant is operating its respective lines, the council of the city of Cleveland has the right to require complainant to sell tickets for passage upon its cars, and particularly so, with reference to the lines formerly operated by the Kinsman Street Railroad Company, with extensions thereto, and that the ordinance of

October 17, 1898, hereinafter referred to, only applies to the
272 lines formerly operated by said The Kinsman Street Railroad Company, with the extensions thereto.

Defendant for answer to paragraph nineteen of complainant's amended bill, admits the passage by the council of the city of Cleveland of the ordinance by Mr. Hopkins of the 17th day of October, 1898, and admits that in passing said ordinance the council of the city of Cleveland, acted under delegated power from the State of Ohio, but defendant denies that said ordinance was in violation or impairment of any of the provisions of any contracts or agreements between complainant and defendant or that said ordinance of October 17, 1898, was in violation of any contract right or any other right secured to complainant by ordinance, or otherwise.

Defendant admits that said paragraph nineteen of said amended bill contains a true copy of said ordinance, and that said ordinance was duly signed by the mayor of the city of Cleveland, and that publication of said ordinance has been duly made. And defendant further admits that the city of Cleveland, its mayor and other officials, and the members of the city council, declare their intention to and do in fact intend to enforce against said complainant, compliance with said ordinance, and that the said ordinance went into effect Tuesday, November 1st. 1898.

Defendant for answer to paragraph twenty of complainant's amended bill, admits that said ordinance of October 17, 1898, requires complainant to carry passengers at a cash fare of four cents, and to sell tickets at the rate of seven for twenty-five cents.

But defendant denies that said ordinance is in direct violation or contravention, or in any way in violation or contravention of any contract or other obligation or obligations existing between complainant and defendant.

Defendant further answering denies each and every alle-
273 gation contained in said paragraph twenty not herein specifically and expressly denied or admitted to be true.

And for answer to paragraph twenty-one of said amended bill, defendant admits that the practical effect and operation of said ordinance of October 17, 1898, is to reduce the rate of fare to be re-

ceived by complainant to four cents for a cash fare, and to about three and four-sevenths (3.571) cents for a ticket fare.

Defendant denies that a cash fare of four cents is inconvenient or heretofore unknown rate of fare. Defendant admits that there is no coin of the denomination of four cents, but denies that that fact, or any other fact, will tend to increase the number of passengers who will buy tickets rather than pay such fare of four cents over any of the lines of street railway of complainant, or that the relative number of passengers using tickets would be greater under said ordinance than it is at the present time, or was in the year of 1897.

Defendant does not know what experience in the operation of street railways has shown as to the relative number of passengers who use tickets in preference to paying a cash fare, when there is such a difference between ticket fare and cash fare as is proposed in said ordinance of October 17 1898, but defendant is informed and believes that such experience shows and that the fact is that no greater number than forty per cent. of the passengers use tickets under such circumstances as *is* contemplated by said ordinance of October 17, 1898, and defendant therefore denies that about seventy per cent. of the passengers, under such a difference between ticket fare and cash fare, use tickets, and avers that no more than forty per cent. of the passengers under such circumstances use tickets. And defendant on its information and belief, as aforesaid, therefore, denies that if said ordinance of October 17, 1898, is enforced, complainant will be obliged to carry about seventy per cent., or any other
274 sum greater than forty per cent., of its passengers at the rate of 3.571 cents.

Defendant on its said information and its belief, denies that under such ordinance about thirty per cent. of the passengers of complainant would pay a cash fare of four cents, but defendant avers on its said information, that fully sixty per cent. of the passengers over the lines of street railway affected by said ordinance, would pay the cash fare of four cents.

Defendant denies that by the operation of said ordinance the gross receipts of complainant would be reduced more than one-fifth or that its said gross receipts would be materially diminished or reduced, or that by said ordinance and the operation thereof, the net receipts of complainant would be diminished fifty per cent. or that said net receipts would be materially diminished.

Defendant further answering the matters and things contained in paragraph twenty-one of said amended bill, denies each and every allegation contained in said paragraph twenty-one not herein expressly and specifically denied or admitted to be true.

Defendant for answer to paragraph twenty-one of said amended bill, denies that there is a recognized actual or definite annual depreciation in the value of electric railway property of the character of the property of complainant, amounting to from ten to twenty per cent., or to any amount whatever, but defendant avers that complainant has at all times since its organization, as did its predecessors in

interest before said organization, not only keep the value of its tangible property intact, but that it and its predecessors at all times, invariably have constantly, steadily and continually added to the value of its and their tangible property, by continually replacing the worn out or depreciated tangible property, by other property greater in quantity and of a greater value; that complainant
275 and its predecessors in interest, in thus keeping intact and increasing the value of all of its or their tangible property, have invariably paid for the expense thereof out of the earnings of its and their lines of street railway, and have invariably charged the same, as a part of the running expense of operating its or their said various lines of street railway.

Defendant further answering said paragraph twenty-two of said amended bill, denies that there is each year a depreciation upon the property necessarily in use by complainant of ten to twenty per cent., or in any other amount; and defendant denies that it is necessary for complainant to put any sum of money aside annually, or otherwise, to cover and depreciation in the value of the property as alleged in said amended bill of complainant, or that the annual cost of operating it- railway is increased $100,000, or in any other sum approaching that amount, by reason of said depreciation, but defendant avers that whatever sum of money is spent by complainant in keeping its tangible property intact and increasing the value thereof, is paid out of the gross receipts of said company, and that after paying said sum and all other items of expense made necessary in operating its various lines of street railway, a large net profit remains to complainant, and would so remain under the operation of said ordinance of October 17, 1898.

Defendant for answer to paragraph twenty-three of said amended bill, admits that under the provisions of some of the grants under which said complainant is operating certain of its lines of street railway, it is required to pave and keep in repair certain portions of certain streets occupied by its tracks; but defendant denies that during the last twenty years complainant and its predecessors in interest have invested or spent in said street paving, or in
276 keeping said portions of said certain streets in repair, or in said paving and said street repairing added together, the sum of one million dollars, or any sum approaching that amount. And defendant avers on its information and belief that complainant and its predecessors in interest, have not during the twenty years last past expended a sum greater than one hundred thousand dollars in street paving.

Defendant further answering said paragraph twenty-three denies that whatever sums were thus expended by complainant and its predecessors in interest for street paving and repairing of streets as aforesaid, were expended by complainant as a consideration to the city for grants made to complainant or to its predecessors in interest, but defendant avers that the paving and repairing so done was for and was done for the benefit of said companies, being confined to the

space occupied by and between and adjacent to the rails and tracks of their respective lines of railway; that the operation of such railways involved a considerable wear and tear on the pavements and streets, and said companies were only required to do, and only in fact did, such paving as was necessary owing to the added wear and tear thereof, resulting from the operation of their respective lines of railway.

And defendant for answer to paragraph twenty-four of said amended bill admits that under the laws of the State of Ohio, it is not competent for councils of municipal corporations to grant rights to street railway companies for any period of time exceeding twenty-five years, and that all the grants under which complainant is operating its lines of railway were made to expire at the expiration of twenty-five years from the time the same were made.

Defendant denies that the average time which complainant's several grants have yet to run before the termination thereof is about thirteen years.

Defendant admits that the rights, if any, in the streets upon
277 one of its main lines expire in the year 1908, or previous thereto, but denies that as the expiration of such grants much or any of the property of complainant will be of little or no value in any event or upon any contingency.

And defendant further answering the matters and things contained in said paragraph twenty-four denies each and every allegation therein contained not herein expressly and specifically denied or admitted to be true.

Defendant for answer to the matters and things contained — paragraph twenty-five of complainant's amended bill, on its information as to what the actual experience of complainant in the operation of its road shows and demonstrates, and on the belief of defendant, denies that if said ordinance of October 17, 1898, were put into operation, and complainant compelled to operate its property in compliance with the terms of said ordinance, it would be impractical or impossible for complainant to realize therefrom the actual cost of maintaining and operating its said property, or that its bonds or any part thereof would become in default, or its investment rendered valueless.

And defendant further answering denies each and every allegation contained in paragraph- twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two of complainant's amended bill of complaint, not hereinbefore or hereinafter expressly or specifically denied or admitted to be true.

Further answering the various matters and things contained in complainant's amended bill of complaint, defendant says that it does not know, as to the pre-ent market value of complainant's stock and bonds, but defendant is informed and believes that the aggregate amount of such capital stock and bonds at the market value alleged in said amended bill of complaint is largely in excess of the actual money invested by complainant or its predecessors in in-

terest, or all of them, in its property, and that the same
278 is largely in excess of the actual value of said complainant's property; that a large proportion of the capital stock of complainant company, to wit: more than two-thirds thereof and a large proportion of the bonds issued by it, are fictitious and represent no value whatever; that the same is not and has not at any time been based, or issued either upon the actual money investment of complainant or its predecessors in interest, or upon the sum of the actual investments of said complainant and all of its predecessors in interest, or upon the actual value of complainant's property.

And defendant avers that at all times during the issuance, sale and distribution of complainant's capital stock and at all times during the issuance, sale and distribution of its said bonds, the council of the city of Cleveland, has had full and complete right and authority, to reduce and diminish the rate of fare to be charged by complainant over each or any of its respective lines of railway, and has had at all times the right to compel said company to sell tickets and to accept the same for passage over its said lines, or any of them. And defendant denies that any of the purchasers of said stock, or that any of the purchasers of said bonds, purchased, or that they or any of them hold the said stock or the said bonds upon the faith of contracts, to the effect that the city would not or could not reduce said rate of fare at any time.

Defendant further answering says, that in the control and management of its business and property, complainant has been guilty of gross mismanagement and extravagance; that it has employed and continues to employ a large corps of officers at extravagant salaries, and has used a part of its income for political and other purposes inconsistent with its charter, and its rights under and by virtue of the ordinance of the city of Cleveland, thereby greatly increasing its annual expenditures.

279 This defendant expressly denies that the fare or rate of fare fixed by said ordinance of October 17, 1898, is unfair, unjust, unreasonable or confiscatory; and alleges and avers that said rate of fare, would if put into effect by the complainant, prove to be sufficient to enable said complainant to pay all the expenses of operating and maintaining its lines of street railway, pay all the fixed charges, and earn a fair and reasonable compensation upon all moneys invested in said street railway system.

And further answering defendant denies that any annual provision or fund should be set aside for any so-called depreciation in the value of the said property of the complainant company, and alleges that any and all depreciation of the property of complainant is fully met and provided for by way of repairs and replacements from time to time, and from year to year, and is included in the annual expenses of complainant; that complainant's property and equipment is fully intact, and its standard of efficiency and value maintained by the repairs and replacements which take place necessarily from the operation of its lines of street railway; and de-

fendant denies that a sinking fund should be created or set aside out of the earnings of said company to indemnify the stockholders of said company and of the various street railway companies, which by the various consolidations hereinbefore referred to, formed complainant company, as they and all of them well knew or ought to have known, at the time of the purchase of their stock, that the duration of the ordinances or licenses under and by virtue of which said companies operated their various street railways, were limited, and had or would cease and terminate at a certain specified time, and having made their investments in view of such knowledge, there is no reason justice or equity which would require the making and setting aside of such provision or fund.

And defendant further says that there is no duty or obligation on the part of complainant company to construct or operate
280 extensions of its lines to keep pace with the future growth of the city of Cleveland, nor is there any duty or obligation on the part of the city to permit such extension.

Defendant further answering says that for the forty years last past, during which complainant and its predecessors in interest have operated their lines of street railway in the city of Cleveland, said city has increased in population from forty-three thousand in 1859 to nearly four hundred thousand at the present time. That said growth had been gradual and continuous, and that during all that time the complainant company and its predecessors in interest have solicited from the council of the city of Cleveland, the privilege of extending its lines from time to time, so as to secure the added patronage and increased business attending such growth of population, for the purpose and with the result, of increasing its annual profits from the operation of its railway system.

That the territory contiguous and adjacent to complainant's lines of street railway, and particularly the territory adjacent to the former lines of railway of the Kinsman Street Railway Company, to wit: the Woodland Avenue line, has year by year become more densely populated, so that the increase in street railway traffic and patronage, has far exceeded the relative increase in the number and length of the lines and extension- of lines of railway made necessary by reason of such increased traffice and business; that it has not been necessary for complainant or its predecessors in interest, to construct, nor have they constructed, new lines of railway in proportion to the increase in traffic and business on said lines of street railway, and especially has it been the case in respect to said Woodland Avenue line.

281 Defendant further says that at all times during said forty years the city through its city council has been liberal in its grants to complainant and to its predecessors in interest, such grants invariably having been made wholly without cost or compensation from said companies, and under such circumstances as to invariably enable said company to secure said grants without competition as to the rate of fare.

That by reason of these facts the Kinsman Street Railroad Company and its successors in interest, have for the said forty years enjoyed a virtual monopoly of the street railroad business in that now very populous portion of the city, traversed by its said lines.

Defendant says that in view of the facts hereinbefore stated the council of the city of Cleveland, in justice, equity and good conscience, and in accordance with its duty to the people of the city of Cleveland, on the 17th day of October 1898, exercised the right reserved to it by the ordinance of August 25, 1879, to reduce the rate of fare upon that portion of complainant's lines to which said ordinance of October 17, 1898, by its terms applies.

And further answering defendant says that the practical operation of putting into effect the ordinance of October 17, 1898, will be to largely increase the business and patronage of the lines affected thereby; that the reduced rate of fare therein provided for will be an inducement for many more persons to patronize the street cars of complainant, on the lines affected by said ordinance, than have theretofore patronized said lines; and that the additional patronage and traffice resulting therefrom, will fully make up for the loss occasioned to complainant in the reduction in its said rate of fare; and this without any material increase in the expenses of operating said lines.

Defendant further answering says, that the necessary cost of constructing, equipping and operating electric street railways in
282 the city of Cleveland and elsewhere, at the present time, is much less than it was when the same was adopted by complainant's predecessors in interest.

And further answering defendant alleges, that from the time the Woodland Avenue & West Side Street Railroad Company changed its system from horse power to electric motive power, until the present time, there has been a gradual and substantial decrease in the cost of all street railway equipment, including rails, ties, poles, wires, motors, car bodies and other machinery, equipment and appliances used in operating street railways, and at the same time a gradual and continual improvement in the quality of such appliances and equipment, as to adaptability and durability, with the result that electric railways can be constructed, maintained, kept in repair, and operated at a greatly reduced cost as compared with the conditions heretofore existing.

And further answering the matters and things contained in said amended bill of complaint, defendant avers that the complainant, The Cleveland City Railway Company, is at present operating sixty-two miles of street railway in the city of Cleveland; that nearly all of the same is a double track road and excepting its Superior Street and Payne Avenue line, is wholly operated by electricity as the motive power, the said Superior Street line and the said Payne Avenue line being operated by the system commonly known as the cable system.

That the ordinance of October 17, 1898, hereinbefore referred to,

does not affect all of complainant's lines of railway as is assumed by complainant in its amended bill of complaint, but as is expressly stated in said ordinance of October 17, 1898, its provisions apply only to such lines of railway as are operated under and in pursuance of the renewal grant of August 25, 1879, namely, the line known as the Woodland Avenue line with its Kinsman Street branch, which said Kinsman Street branch was built as an
283 extension to said Woodland Avenue line, as has been hereinbefore stated.

That the total mileage of said street railway line affected by said ordinance of October 17, 1898, is thirteen miles, leaving forty-nine miles of complainant's lines of street railway in no way or manner affected or sought to be affected by said ordinance of October 17, 1898.

Defendant avers that neither the gross receipts, the net receipts, nor the expenses of operating any of complainant's lines of street railway will be affected by the operation of said ordinance of October 17, 1898, except that portion thereof known as the Woodland Avenue line with its Kinsman Street branch as aforesaid, and that said lines thus affected by said ordinance constitute but twenty-one per cent. of complainant's total or aggregate lines of street railway in said city of Cleveland, leaving seventy-nine per cent. thereof absolutely unaffected thereby as to gross receipts, expenses, net receipts, or otherwise.

Defendant avers that the traffic and business on each of complainant's various lines of street railway and the gross receipts, the expenses and the net receipts are substantially in proportion to the number of miles of each particular line of railway; that is to say, the income from and expense of operating each separate line is substantially the same for the same or an equal number of miles of track.

Defendant says that the reduction in complainant's net receipts resulting from the operation of said ordinance of October 17, 1898, as alleged in complainant's amended bill, is not only fictitious and erroneous, but it is based upon the supposition that the reduction of fare applies to each and every one of complainant's lines of street railway; that is to say, it is calculated on a basis of a four cent cash fare, and a 3.57 cent ticket fare, for all of complainant's lines
284 of railway, while in truth and in fact said ordinance applies to but twenty-one per cent. of said street railway system as aforesaid.

Therefore, defendant says, that the operation of said Woodland Avenue and Kinsman Street lines at a four cent cash fare and a 3.571 cent ticket fare, as provided in said ordinance, will enable complainant to pay all of its operating expenses, fixed charges and a fair and reasonable profit on the money actually invested in its property and on the actual value of its property, leaving a large surplus in addition thereto, and that said ordinance is in its terms just and reasonable.

Defendant further answering says, that complainant's receipts and

net income, revenue and profit from carrying passengers is not its only source of income, revenue and profit. That in addition to its income from carrying passengers said company has derived, and is deriving, an income and revenue from carrying United States mail, express matter and other packages, goods and merchandise, and an income and revenue from furnishing electric light, heat and power to various citizens, and for various purposes in the city of Cleveland, and from letting advertising space in and upon its street cars, and from certain agreements and beneficial arrangements and contracts entered into between the complainant and various electric railways without the city of Cleveland, and from various other sources.

Defendant says that it is not informed as to the exact amount of the income and profits received by complainant from these several sources of revenue, but it avers that the income from such sources is not less than $100,000 per annum.

Defendant further says that during the years which said company may in the future, under present ordinances, operate its lines of railway in said city that it is only fair to presume that said city will continue to grow as it has for many years past, and that such continued growth will greatly add to the business and profits of said complainant company.

285 Further answering defendant denies, that before complainant could at law demonstrate the invalidity of said ordinance by adjudication, a multiplicity of suits would ensue, or that great inconvenience, conflict or trouble would arise as alleged in paragraph thirty-three of complainant's amended bill, but defendant admits that by its terms said ordinance went into effect November 1st, 1898.

Defendant further answering the matters and things contained in paragraph thirty-three says, that it does not know and is not informed save by complainant's bill and amended bill, as to the matters and things therein contained, except that this defendant avers that it was and is the intention of the City of Cleveland to carry into effect and enforce the provisions of said ordinance, according to the true intent and meaning thereof, unless restrained by the order of some court of competent jurisdiction in the premises, and it therefore denies each and every allegation contained in said paragraph thirty-three not herein expressly denied or admitted to be true and demands proof thereof.

And defendant avers and contends that this court has no jurisdiction of this cause, among other reasons, for this, that the complainant has a complete and adequate remedy at law; that the subject matter of this cause does not properly come within the jurisdiction of a court of equity, and is one appropriately and properly within the jurisdiction of a court of law.

That this cause does not arise under the laws or Constitution of the United States, and that said cause does not present, and is not a controversy between citizens of different States, but is a controversy

between citizens of the same State, viz; between the said complainant, The Cleveland City Railway Company, and the said defendant, The City of Cleveland, who are both citizens of the State of
286 Ohio.

And this defendant avers that any other matter cause or thing in said amended bill contained, material, or necessary to make answer to, and not herein well and sufficiently answered, confessed, traversed, avoided or denied, is not true to the knowledge and belief of this defendant; and defendant denies each and every allegation in said amended bill of complaint contained, not hereinbefore specifically admitted or denied; all of which matters and things this defendant is ready and willing to aver maintain and prove as this honorable court shall order and direct, and this defendant denies that complainant is entitled to the relief, or any part thereof, in said amended bill demanded, and prays to be hence dismissed with its costs.

T. H. HOGSETT,
BEACOM, EXCELL & GAGE,
Solicitors and Attorneys for the Defendant.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Matthew B. Excell, being duly sworn, says that he is assistant corporation counsel of the defendant, The City of Cleveland, a municipal corporation, and one of the attorneys for defendant in this action; that he makes this affidavit as such assistant corporation counsel and as such attorney, in behalf of the said City of Cleveland; that he has read the foregoing answer to the amended bill of complaint and knows the contents thereof; that each and every allegation contained in said answer is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes them to be true.

MATTHEW B. EXCELL.

Sworn to before me by the said Matthew B. Excell, and by
287 him subscribed in my presence this 5 day of May, A. D. 1900.

JACOB M. CRAWFORD,
[SEAL.] *Notary Public.*

Tax fee 40c.

Endorsements on answer to amended bill: No. 5839. Circuit court of the United States northern district of Ohio eastern division. The Cleveland City Railway Company, complainant, *v.* The City of Cleveland, defendant. Answer to amended bill of complaint. Filed May 5 1900 Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell & Gage, attorneys and solicitors for defendant.

288 *Order of Continuance.*

April Term, A. D. 1900, to-wit, October 1st, A. D. 1900.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND CITY RAILWAY CO. *vs.* THE CITY OF CLEVELAND. } No. 5839. Chancery.

This cause is continued to the next term of this court.

Order of Continuance.

October Term, A. D. 1900, to-wit, February 2nd, A. D. 1901.

Present: Honorable Francis J. Wing, U. S. district judge.

THE CLEVELAND CITY RY. CO. *vs.* THE CITY OF CLEVLAND. } No. 5839. Chancery.

This cause is continued to the next term of this court.

289 *Notice of Application for Decree.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } In Equity. No. 5839.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } In Equity. No. 5840.

The defendant, City of Cleveland, will take notice that on February 5th, at two o'clock p. m., the complainants will make application to the court for a decree upon the amended bill and amended answer in these causes. Copies of the motion and decree to be asked for are submitted herewith.

SQUIRE, SANDERS & DEMPSEY,
Counsel for Complainants.

Service of the above notice is hereby acknowledged this 4th day of February, 1901.

T. H. HOGSETT,
Counsel for Defendant.

Endorsements on notice: Nos. 5839–5840 The Cleveland City Ry. Co. The Cleveland Electric Ry. Co. plaintiffs *vs.* The City of Cleveland defendant. Notice. Filed Feb. 5 1901 Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

290 *Cause Submitted on Pleadings.*

February Term, A. D. 1901, to-wit, February 5th, A. D. 1901.

Present: Honorable Augustus J. Ricks and Francis J. Wing, United States district judges.

THE CLEVELAND CITY RAILWAY CO.
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

This day came the solicitors of the respective parties and submit this cause to the court upon the pleadings and leave is given to the solicitors for the defendant to file their brief herein by March 1", 1901.

291 *Replication.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY,
Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } No. 5839. Replication.

This replicant, The Cleveland City Railway Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, The City of Cleveland, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, ma-erial or

effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

SQUIRES, SANDERS & DEMPSEY,
Solicitors for Complainant.

Endorsements on replication: No. 5839. The Cleveland City Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Replication. Filed Mar. 2 1901 Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

292 *Motion of Defendant for Final Decree.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } Motion.

The above-named complainant, The Cleveland City Railway Company, now comes and moves the court to enter final decree in its favor as prayed for in the amended bill of complaint herein, adjudging the ordinance in said amended bill of complaint described entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25th, 1879, entitled, 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, to be null and void and of no effect, in that, as appears by the amended bill of complaint and the admissions of the amended answer herein, said ordinance is in violation of the contract obligations existing between the complainant and the defendant herein, and impairs the contract rights of the complainant, in violation of the Constitution of the United States.

Complainant further shows that, upon the amended bill, amended answer, and replication, it is entitled to the decree without a determination of any of the matters in respect to which issues are raised by the amended answer of the defendant herein.

THE CLEVELAND CITY RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

Endorsements on motion: No. 5839. The Cleveland City
293 Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Motion. Filed Mar- 5 1901 Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

294 *Opinion of Court and Order for Final Decree.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY CO., Plaintiff,
vs.
THE CITY OF CLEVELAND, Defendant. } In Equity. No. 5839.

An application was made sometime ago in this case for a preliminary injunction, and the same was heard upon the pleadings, exhibits and evidence relating thereto.

The hearing involved the validity of certain ordinances passed by the city council of the city of Cleveland, assuming power to prescribe the rates of fare to be charged to passengers upon its street railways, and other questions, presented by the record.

Upon the issues so made, a full hearing was had, and the application was allowed, for reasons fully set forth in an opinion of the court published in the 94th Federal Reporter, page 385 to which reference is now made.

Since that opinion was filed, the pleadings have been so amended that the questions already passed upon now appear upon the face of the bill and answer.

At this stage of the pleadings the complainant moves for a final decree on the face of the pleadings adjudging the ordinances in question to be void as impairing existing contract rights.

The court has reëxamined upon this motion the record as hereinbefore stated together with an additional brief filed by counsel for the city, and the opinion hereinbefore rendered, and being still satisfied that the former ruling was right, and adhering to the
295 same, it follows that the complainant is entitled to a decree as claimed in its motion.

A final decree may therefore be entered upon the issues made upon the face of the bill and answer and replication, and without passing upon any other question at issue under the pleadings.

AUGUSTUS J. RICKS,
U. S. Dist. Judge.

Endorsements on opinion: No. 5839. The Cleveland City Railway Co., plaintiff, *vs.* The City of Cleveland, defendant. Opinion of court and order for final decree. Filed Mar. 11 1901 Irvin Belford, clerk, U. S. circuit court, N. D. O.

296 *Final Decree.*

February Term, A. D. 1901, to-wit: March 11th, A. D. 1901.

Present: Honorable Francis J. Wing, U. S. district judge.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } 5839. Chancery.

This day this cause came on to be heard upon the motion of the complainant for a decree upon the amended bill, amended answer, and replication, and was argued by counsel.

Whereupon the court finds:—

That, by the admissions of the amended answer of the ordinance pleaded herein, it appears that the ordinance complained of in the amended bill of complaint is a law of the State of Ohio impairing the obligations of contracts existing between the complainant and the defendant; and said motion is therefore granted.

And the said cause coming on for further hearing upon the amended bill, amended answer, and replication, being argued by counsel, and the court being fully advised in the premises,—

It is ordered, adjudged and decreed that, upon the facts admitted by the amended answer, the complainant is entitled to a decree adjudging the ordinance of the city of Cleveland, passed October 17th, 1898, to be null and void as a law impairing the obligations of contracts existing between the complainant and the defendant, as appears in said amended bill of complaint and amended answer, and that, for a final disposition of this cause, it is unnecessary for the court to determine the other issues arising upon said amended bill, amended answer, and replication, as to whether said ordinance complained of is unreasonable, and whether its enforcement would be, as alleged by the complainant, the taking of its property without due process of law.

297 It is therefore further ordered, adjudged, and decreed that the ordinance of the city of Cleveland, referred to in said amended bill of complaint herein and entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25th, 1879, entitled: 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, is null and void; and the City of Cleveland, and the mayor and common council of said city, and all officers, agents, attorneys, employés, representatives, departments of said city and their respective agents, representatives and employés, and the director of law of said city and his associates and assistants, and their respective suc-

cessors in office, be, and they are hereby, perpetually enjoined, restrained, and prohibited from putting said alleged ordinance into effect, or attempting so to do, and from instituting or authorizing or directing any suit or suits, action or actions, or any proceedings against the complainant or any conductor or employé, or any officer, representative or agent of the complainant, the object or purpose of, or relief sought by, said action, suit, or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions, or to compel the complainant or any officer, representative, conductor, or agent of it to accept the cash fare provided for in said ordinance or to sell tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof, and from instituting or prosecuting any action or proceeding for violation of said alleged ordinance or any part thereof, whether complaint be made or said action be instituted by or in behalf of said City of Cleveland or any other person; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any fine, penalty, or forfeiture for violation of said alleged ordinance or any part thereof;
298 and from bringing any suit, action, or proceeding for the purpose of vacating the charter or annulling the existence of the complainant as a corporation, or for the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof or any of its provisions.

It is further ordered and adjudged that the defendant, The City of Cleveland, pay the costs of this action, taxed at — dollars, for which execution is awarded.

(Signed) "AUGUSTUS J. RICKS,
U. S. Dist. Judge, N. D. O."

299 *Notice of Appeal.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5839. Notice of Appeal by Defendant.

To the Cleveland City Railway Company and Squire, Sanders & Dempsey, its solicitors and counselors:

You are hereby notified that The City of Cleveland, defendant in the above-entitled cause, intends to and hereby does appeal from the final decree of the circuit court of the United States in and for the northern district of Ohio, eastern division, entered in the above

entitled action on the 11th day of March A. D. 1901, to the Supreme Court of the United States.

Dated at Cleveland, the 2nd day of March 1903.

BAKER, PAYER, GAGE AND CAREY,
Solicitors and Attorneys for Defendant.

Service of copy of within notice of appeal acknowledged this 2nd day of March 1903.

SQUIRE, SANDERS & DEMPSEY,
Solicitors and Counselors for Complainant.

Endorsements on notice of appeal: No. 5839. Cir. ct. of U. S. nor. dist. of Ohio, eastern division. The Cleve. City Ry. Co., complainant, *vs.* The City of Cleveland, defendant. Notice of appeal by def't. Filed Mar. 2 1903 Irvin Belford, clerk, U. S. circuit court, N. D. O. Baker, Payer, Gage & Carey solicitors & att'ys for def't.

300 *Petition on Appeal.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5839. In Equity. Petition on Appeal.

The City of Cleveland, a municipal corporation, the above-named defendant, conceiving itself aggrieved by the order and decree made and entered in the above-entitled cause on the 11th day of March anno Domini 1901, wherein and whereby it was ordered, adjudged and decreed that—an ordinance of the city of Cleveland, passed October 17, 1898 and entitled: "An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;'" is null and void, and the City of Cleveland, all of its officers, agents and employés be perpetually enjoined and prohibited from effectuating said ordinance or attempting so to do or predicating any action thereon, and that the defendant, The City of Cleveland, pay the costs of said action,—does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said decree was made,

duly authenticated, may be sent to the Supreme Court of the United States.

Dated 2nd day of March 1903.

BAKER, PAYER, GAGE AND CAREY,
Solicitors and Attorneys for Def't.

301 Endorsements on petition on *appeal: No. 5839. In cir.* ct. of U. S. northern dist. of Ohio, eastern division. The Clev. City Ry. Co., complainant, *vs.* The City of Cleveland, defendant. In equity Petition on appeal. Filed Mar. 2 1903 Irvin Belford, clerk, U. S. circuit court, N. D. O. Baker, Payer, Gage & Carey att'ys & solicitors for def't.

302 *Assignment of Errors.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5839. In Equity. Assignment of Errors on Appeal.

Now, on the 2nd day of March anno Domini 1903, comes the defendant, The City of Cleveland, a municipal corporation, by Baker, Payer, Gage & Carey, its solicitors and attorneys, and says that the decree in the above-entitled cause is erroneous and against the just rights of said defendant, and files the following assignment of errors, upon which it intends to rely and to urge in the prosecution of the appeal from the decree made by this honorable court on the 11th day of March A. D. 1901 in the above-entitled cause.

It says that the said court erred in making and entering its said decree granting a permanent injunction and adjudging the costs against this defendant, for the following reasons:

1. That the said court did not have jurisdiction of the defendant, The City of Cleveland.

2. That the said court did not have jurisdiction of the subject-matter presented by said cause.

3. That said court erred in granting the motion of the complainant therein, and in rendering, making and entering a decree upon the amended bill, amended answer and replication.

4. That said court erred in adjudging and decreeing the following ordinance of the city of Cleveland passed October 17, 1898
303 to be null and void, to-wit:

"*Ordinance No.* 22437.

By Mr. Hopkins.

"An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland.'

"Whereas, the city council did, on the 25th day of August, 1879, pass an ordinance entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,' by which ordinance said Kinsman Street Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double-track street railroad, commencing on Superior street at the intersection of Water street; thence to and around the southwest corner of Monumental square to Ontario street; thence through Ontario street to and through a portion of Broadway street to Woodland avenue (formerly Kinsman street); thence through said avenue to Madison avenue, subject to certain conditions and limitations; and

Whereas, it was ordained, as part of those conditions and limitations (section 7), that 'said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient;' and

Whereas, the council does now deem justifiable and expedient a diminution of the rate of fare, therefore,

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines, and all extensions thereof, operated under the aforesaid grant to the said Kinsman Street Railroad Company be and is hereby fixed at four (4) cents cash fare over the whole or any part thereof.

SEC. 2. For the better accommodation of the public, any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

5. That said court manifestly erred in finding, decreeing and adjudging the said ordinance complained of in the amended bill of the complainant, to be a law of the State of Ohio impairing the ob-

ligations of contracts existing between the complainant and
304 defendant.

6. That said court erred in adjudging and decreeing said ordinance to be null and void as impairing the obligation of any contract existing between the complainant and defendant, and as conflicting with section 10 of article 1 of the Constitution of the United States.

7. That the allegations in the pleadings and the admitted facts show affirmatively and without contradiction that the defendant had not by said ordinance complained of in bill of complainant, or otherwise, impaired any obligation created by any contract existing between complainant and defendant.

8. That there was no evidence adduced by or on behalf of the complainant whereby it appeared or could have appeared that said ordinance impaired any contractual obligation existing between the complainant and defendant; and that there was no admission made by the defendant in that regard.

9. That no evidence was adduced or could have been adduced to show that any contractual right of the complainant or contractual obligation of the defendant created by any ordinance or ordinances, resolution or resolutions theretofore passed or adopted by the city council of the city of Cleveland was or were annulled or impaired by the ordinance constituting the gravamen of complainant's cause.

10. That the allegations in the pleadings and the admitted facts show affirmatively and without contradiction that the enforcement of said ordinance would not constitute a taking of property without due process of law and would not contravene or violate section 1 of article 14 of the amendments to the Constitution of the United States.

11. That no evidence was adduced or could have been adduced to show that any property of the complainant would by the operation or effectuation of said ordinance have been taken from
305 the complainant by the defendant without due process of law.

12. That said court erred in excluding from its consideration and refusing to entertain evidence showing that said ordinance in practical operation would not reduce the gross receipts or the net profits or increase the operating expenses of said complainant.

13. That said court erred in excluding from its consideration and refusing to entertain evidence showing that the rate of fare in and by said ordinance fixed was reasonable and that the regulations therein established were reasonable.

14. That there was no evidence adduced by the complainant or admission made by the defendant that any ordinance or ordinances passed by the city council of the city of Cleveland invested the complainant with the right to maintain a fixed and unchangeable charge for either cash or ticket fare as respects the line or lines affected by said ordinance.

15. That said court erred in adjudging and decreeing that The City of Cleveland, defendant therein, had not the right to regulate

the rate of fare as undertaken in the ordinance complained of in the bill of complaint.

16. That said court erred in adjudging and decreeing that the defendant had not specifically reserved the right and the authority to regulate the rate of fare as undertaken in the ordinance complained of in the bill of complaint and in such manner as defendant might deem justifiable and expedient.

17. That said court erred in adjudging and decreeing that the City of Cleveland relinquished or surrendered or could have relinquished or surrendered any rights then existing or theretofore established as respects the regulation of the rate of fare charged by the complainant on the lines and streets affected by said ordi-
306 nance, by the passage on May 15, A. D. 1903 of the following resolution:

"Resolved, That the communication from the Woodland Avenue & West Side Street Railroad Company and from the Cleveland City Cable Railway Company, setting forth their consolidation into the Cleveland City Railway Company, be received; and that this council approve such consolidation upon the terms and conditions stated in such communication, and that such consolidated company shall be subjected to all the ordinances and regulations now or hereafter in force."

or in any other manner.

18. That said court erred in adjudging and decreeing that by any of the ordinances or resolutions set forth in complainant's amended bill of complaint, the complainant was invested with any right divesting the defendant of the power to alter the rate of fare as undertaken in the ordinance set forth and complained of in said bill of complaint.

19. That said court erred in adjudging and decreeing that the defendant, The City of Cleveland, by or through its city council, or any of its agents, at any time or in any manner, relinquished or surrendered or could have lawfully or legally or properly relinquished or surrendered any right to regulate or establish the rate of cash or ticket fare as undertaken in the ordinance complained of in the bill of complaint and herein fully set forth.

Wherefore in order that the foregoing assignment of errors may be and appear of record, the defendant presents the same to the court and prays that such disposition be made thereof as will be in accordance with law and the statutes of the United States in such cases made and provided, and defendant prays that the said decree be reversed and that said court may be directed to enter a decree and judgment for the defendant and appellant.

BAKER, PAYER, GAGE & CAREY,
Solicitors and Attorneys for Def't.

307 Endorsements on assignment of errors: No. 5839. In cir. ct. of U. S. No. dis. of Ohio, eastern div. The Cleve. City Ry.

Co. complainant, *vs.* The City of Cleveland, defendant. In equity Assignment of errors on appeal. Filed Mar. 2 1903 Irvin Belford, clerk U. S. circuit court, N. D. O. Baker, Payer, Gage & Carey solicitors & att'ys for def't.

308 *Order Allowing Appeal.*

February Term, A. D. 1903, to wit, March 2nd, A. D. 1903.

Present: Honorable Francis J. Wing, U. S. district judge.

THE CLEVELAND CITY RAILWAY Company *vs.* THE CITY OF CLEVELAND.	5839. In Equity. Order Allowing the Appeal.

The defendant, The City of Cleveland, a municipal corporation, considering itself aggrieved by the decree and order herein granted and entered on the 11th day of March anno Domini 1901, comes now and presents to the court its petition for an allowance of an appeal to the Supreme Court of the United States, together with an assignment of errors, setting out separately and particularly each error asserted and intended to be urged in its behalf.

In consideration whereof it is ordered that the said petition on appeal is granted and the claim of appeal therein made be and is hereby allowed to the Supreme Court of the United States from the decree and order made and entered March 11, 1901, granting a permanent injunction and adjudging the costs against the defendant herein; and it is further ordered that the amount of bond upon said appeal be and hereby is fixed at the sum of $500.00 conditioned for the payment of the costs by the defendant in case it does not make good its plea as provided by law; and that an authenticated transcript of the record and proceedings and papers upon which said decree was rendered in this court be forthwith transmitted, duly certified and verified to the said Supreme Court of the United States according to law in such cases made and provided.

Done in open court this 2 day of March 1903.

309 *Bond on Appeal.*

Know all men by these presents, that we The City of Cleveland as principal and J. P. Madigan and Newton D. Baker as sureties, are held and firmly bound unto The Cleveland City Railway Company in the full and just sum of five hundred dollars to be paid to the said The Cleveland City Railway Company its certain attorneys, executors, administrators or assigns; to which payment well and

truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of March in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a circuit court of the United States for the northern district of Ohio, eastern division, in a suit depending in said court, between The Cleveland City Railway Company, complainant, and The City of Cleveland, defendant, a decree was rendered against the said The City of Cleveland and the said The City of Cleveland having obtained an order of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Cleveland City Railway Company citing and admonishing it to be and appear at the United States Supreme Court at the city of Washington, D. C., on the 2nd day of April next.

Now, the condition of the above obligation is such, that if the said The City of Cleveland shall prosecute said appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CITY OF CLEVELAND, [SEAL.]
By BAKER, PAYER, GAGE & CAREY.
J. P. MADIGAN. [SEAL.]
NEWTON D. BAKER. [SEAL.]

Sealed and delivered in presence of

P. J. WAGNER.
PATRICK R. FINN.

Approved by

FRANCIS J. WING, *Judge.*

310 Endorsements on bond: No. 5839. The Cleveland City Railway Company v. The City of Cleveland. Bond on appeal to the United States Supreme Court. Filed Mar. 3, 1903. Irvin Belford, clerk, U. S. circuit court, N. D. O.

311 In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5839. In Equity. Citation to Appellee.

THE UNITED STATES OF AMERICA, *ss:*

To the Cleveland City Railway Company and Squire, Sanders & Dempsey, its solicitors and counselors, Greeting:

Whereas the City of Cleveland has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the northern district of Ohio in the eastern division, made and entered in favor of you, and

Whereas said The City of Cleveland has duly filed the security required by law;

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America at Washington, D. C., on the second day of April next, to wit, April 2nd A. D. 1903, pursuant to an order allowing an appeal duly entered and recorded in the office of the clerk of the circuit court of the United States for the northern district of Ohio in the eastern division, in that certain action numbered 5839, in which The Cleveland City Railway Co. is complainant, and The City of Cleveland is defendant and appel-
312 lant, to show cause if any there be why the decree rendered and entered against said defendant and appellant, *and* mentioned in said appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Cleveland in the northern district of Ohio, eastern division, this 3 day of March in the year of our Lord one thousand nine hundred and three.

FRANCIS J. WING, *Judge.*

Due personal service of the within citation and receipt of copy thereof is hereby admitted and accepted, and the appearance of the appellee in the Supreme Court of the United States is hereby entered this 3rd day of March 1903.

THE CLEVELAND CITY RAILWAY COMPANY.
By SQUIRE, SANDERS & DEMPSEY,
Solicitors and Counselors for Appellees.

313 *Præcipe for Transcript.*

The city of Cleveland, department of law.

Newton D. Baker, corporation counsel.
H. F. Payer, Benj. A. Gage, W. A. Carey, assistants.
C. J. Estep, special counsel.

MARCH 13, 1903.

Irvin Belford, Esq., clerk U. S. circuit court, city.

DEAR SIR: In the case of The Cleveland City Railway Co. *vs.* The City of Cleveland, numbered 5839 in the records of the circuit court of the United States, for the northern district of Ohio in the eastern division, recently appealed by the defendant to the United States Supreme Court, kindly transmit under your hand and seal, to the Supreme Court of the United States a *complete*, authenticated transcript of the record containing the process, pleadings, motions rulings, and opinions of the court thereon, the final decree and order, finding of facts and opinion of the court, all affidavits, depositions and evidence therein, notice of appeal, petition for allowance of appeal, assignment of errors, bond on appeal citation, admission of service and entry of appearance and such other orders memoranda, papers, exhibits, and proceedings had in said cause as may be necessary and are required by law, so that the said cause and the *whole* record therein, together with a copy of the opinion or opinions rendered and filed, may go up on appeal for the consideration of the Supreme Court of the United States.

BAKER, PAYER, ADDAMS & CAREY,
Att'ys for City of Cleveland, Appellant.

Endorsements on præcipe: 5839. The Cleveland City Ry. Co. *v.* The City of Cleveland. Præcipe for transcript. Filed Mar. 14, 1903. Irvin Belford, clerk, U. S. circuit court, N. D. O.

314 *Certificate of Clerk.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5839. Chancery.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States in and for said district, do hereby certify that the annexed and foregoing pages contain a full and true copy of the final record, including the petition for appeal, assignment of errors and all proceedings in said cause; and there is embraced in such record, true copies of the opinions of the court, the affidavits and exhibits therein filed, the originals of all of which remain in my custody as clerk of said court.

There is also attached to and transmitted with said record, the citation issued and allowed herein.

Seal of the Circuit Court, Northern Dist. of Ohio.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at Cleveland, Ohio, in said district, on this 21" day of March, A. D. 1902, and in the 127th year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
By B. C. MILLER,
Deputy Clerk.

Endorsed on cover: File No. 18,887. N. Ohio C. C. U. S. Term No. 255. The City of Cleveland, appellant, *vs.* The Cleveland City Railway Company. Filed April 9", 1903.

(18,888.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 256.

THE CITY OF CLEVELAND, APPELLANT,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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1 UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, Eastern Division,

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio, in the cause and matter hereinafter stated, the same being disposed of at a regular term of said court begun and held at the city of Cleveland, in said district on the first Tuesday in February, being the fifth day of said month in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the 125th, towit: on the 11th day of March, A. D. 1901.

Present: The Honorable Augustus J. Ricks, Honorable Francis J. Wing, United States district judges.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

Said action was commenced on the 29th day of October, A. D. 1898, and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned, and orders of the court were made and entered in the order, and on the dates hereinafter stated, to-wit:—

2 *Bill of Complaint.*

3 In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } In Equity. Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

The above named complainant, The Cleveland Electric Railway Company, is a citizen of the State of Ohio, and brings this its bill against the above named defendant, The City of Cleveland, a municipal corporation of the State of Ohio and a citizen thereof.

Thereupon your orator complains and says:—

1. The complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway hereinafter in this bill more particularly set forth.

The defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and, in respect to the matters and things hereinafter set forth as to the ordinances affecting this complainant, said defendant acts under delegated power from the legislature of the State of Ohio, and, so acting, has made sundry contracts with your orator and its predecessors in interest, under which it is so operating its said lines of railway in the city of Cleveland.

4 2. That the amount in controversy in this action, which is a civil action, amounts, exclusive of interest and costs, to more than the sum of five thousand dollars, and is a controversy arising under the Constitution of the United States, in this,—that your orator seeks relief against the defendant by this bill, by reason of an attempt on the part of the defendant to enforce against your orator a law of the State of Ohio impairing the contract rights of your orator, and the operation of which, if permitted, would take from your orator its property without the due process of law and deny to it the equal protection of the law, in contravention and violation of the provisions of the Constitution of the United States, and especially contrary to and in violation of section 1, of article 14, of the amendments to the Constitution of the United States, and section 10, of article 1, of the Constitution of the United States.

3. Your orator is a consolidated railway company, and was organized in the year 1893, with a capital stock of twelve millions of dollars, substantially all of which is issued, and, in addition to said stock, has outstanding a bonded indebtedness, secured by mortgage upon its property, aggregating about $3,750,000.00, and a floating debt of about $250,000.00; all of which indebtedness represents money which has been invested in said property; that, as a consolidated company, your orator was formed by the consolidation of the following named constituent companies, which, at the time of and prior to such consolidation owned and operated street railways in the city of Cleveland under ordinance duly passed by the said municipality, the city of Cleveland, and accepted by each of said companies; and, by the terms of such consolidation and the force and effect thereof as provided by the statutes of Ohio in such case made and provided, your orator became and is possessed of all the rights, franchises, privileges and property theretofore possessed by said constituent companies and each of them. The constituent

5 companies which were so consolidated were as follows: the East Cleveland Railroad Company; the Broadway & Newburg Street Railroad Company; the Brooklyn Street Railroad Company; and the South Side Street Railroad Company.

4. That each of said constituent companies so consolidated was operating its respective lines of street railway under ordinances passed by the city of Cleveland in pursuance of power delegated to

it by the legislature of the State of Ohio, and which ordinances, having been accepted by said separate railway companies, became and were contracts, binding upon both said city and upon each of said railway companies during the periods of time for which the said grants were made.

5. The said East Cleveland Railroad Company was a corporation which had been in existence and operated lines of street railway in the city of Cleveland since about the year 1859, and, at the time of said consolidation, owned and was operating several lines of street railway in said city, namely:

The line which was known as the Euclid Avenue line, extending from the business portion of the city on Bank street, through Superior street, Euclid avenue, Erie street, Prospect street, Case avenue, and Euclid avenue to the city limits.

The line known as the Garden Street line, which was operated from Bank street through the public square and on portions of Euclid avenue, Erie street and Garden street.

The line known as the Cedar Avenue line, which at that time was operated from Bank street upon Superior, through the public square, and on certain portions of Euclid avenue, Prospect street, Perry street, and Cedar avenue.

The line known as the Wade Park Avenue line, which was operated upon Bank street, through Superior and portions of the public square, Euclid avenue, Prospect street, Case avenue, Perkins avenue, Willson avenue, Hugh avenue, Dunham avenue and Wade Park avenue to the easterly limits of the city.

The aggregate mileage of the lines operated by said company was about forty miles, and each of said lines had been con-
6 structed and was in operation under grants from the city of Cleveland, and upon the faith of which said company had so constructed its lines of railway; and in and by which said grants the city and said company, as authorized by the statutes of Ohio, had agreed as to the terms and conditions and the period of time for the operation by said company of its said lines of street railway.

6. Your orator says that, prior to the 15th day of September, 1879, the said East Cleveland Railroad Company was operating its main line of railway from the intersection of Superior and Water streets to the easterly limits of the city on Euclid avenue under various separate grants, some of which ran from the city council of the defendant, some had been granted by the county commissioners before the territory affected thereby became part of the city of Cleveland, and still other grants from the authorities of the former village of East Cleveland before such territory became part of the city of Cleveland; and the contracts rights of the company for the operation of its road easterly from Willson avenue contained few restrictions, and none respecting the rates of fare to be charged, and extended for a period of nearly twenty years, and at that time, east of Willson avenue upon Euclid, there was but a single track, and,

under contracts and agreements then in force between the company and the public authorities, it had the right to charge passengers one fare from Water street to Willson avenue, and another fare from Willson avenue to Fairmount street, and still another fare from Fairmount street to the city limits; and it was, in fact, at that time, charging passengers two fares between *Ware* and Superior streets and the city limits.

7. In this situation, said East Cleveland Company and the said city of Cleveland—said city being authorized thereto by the statutes of the State—entered into a new contract providing for the renewal of the grant to the said East Cleveland Railroad Company, for the reconstruction, maintenance and operation of a double-track
7 street railway over a portion of the line then operated by said company, to-wit: From Superior and Water streets, through Superior street, around the public square to Euclid avenue, through said avenue to Erie street, thence to Prospect street, thence to Case avenue, through Case avenue to Euclid avenue, and along said Euclid avenue to Willson avenue, subject to certain limitations and conditions therein expressed; and in and by said ordinance new conditions were imposed as respects street paving to be done by said company, removal of snow and ice from the tracks, and sundry other similar provisions; and in and by section 6 of said ordinance it was provided that the said East Cleveland Company should not charge more than five cents each way for a passenger over the whole or any part of the line therein renewed; that said company might charge a reasonable compensation for carrying packages, and that the council reserved to itself the right to thereafter increase or diminish the rate of fare as it might deem justifiable and expedient; and under the provisions of said last mentioned ordinance and grant, which by its terms were to remain in force for a period of twenty-five years from the 20th day of September, 1879, the said company reconstructed its said tracks between Superior and Water streets and Willson avenue as aforesaid, and thereafter, up to the 4th day of April, 1883, continued the operation of its said line, and charged, as it was permitted to do by said ordinances then in existence, one fare of five cents between Superior and Water streets and Willson avenue, and an additional fare of five cents from Willson avenue eastwardly to the end of its line.

8. Your orator says that thereafter, on or about April 4th, 1883, said company entered into a new contract with said city, evidenced by ordinance duly passed, and accepted by said company, by which, upon certain terms and conditions, it was granted the right to extend and to build an additional track, and operate a double-track line on Euclid avenue from the west line of Willson avenue to the east line of Fairmount street, and in and by such ordinance and
8 grant said company agreed that it would charge but one fare of not more than five cents between the westerly terminus of the company's road on Superior street and the easterly terminus of its line, and that the rights granted should expire on the 20th

day of September, 1904; and in and by said contract it was provided that the council reserved to itself the right to thereafter increase or diminish the rate of fare between the westerly end of said company's line on Superior street and the city limits, as it might deem justifiable and expedient.

9. Your orator further shows that, upon the making of said last mentioned contract, the relations between the city of Cleveland and the said East Cleveland Railroad Company were so far changed that the company had agreed to carry passengers over its line as far easterly as the city limits for the rate of fare specified in the last-mentioned ordinance, to-wit: five cents for each passenger, but it had not agreed and was under no obligation to run all of its cars through, and was, in fact, within its lawful right, operating only a portion of its cars as through cars, and was under no obligation to transfer, and was not transferring, passengers who desired to go east of Willson avenue who had taken passage upon a car which did not go beyond that point; but such arrangement and operation of its cars were unsatisfactory to the municipality as well as to the company, and thereupon, in March, 1886, to the end that the public might be given through car service from the business portion of the city to the easterly limits on Euclid avenue, a new contract was entered into between the city of Cleveland and said East Cleveland Railroad Company, by which said company upon its part became obligated to construct and operate a double-track railroad in Euclid avenue between the easterly line of Fairmount street and the easterly limits of the city, such territory theretofore having been occupied by a single track only, and thereby making its entire Euclid Avenue line a double-track street railroad; and in and by said ordinance it also agreed to pave be-
9 tween the rails of each track, together with the spaces between the rails, and to keep certain portions of the pavement in good repair; each and all of which obligations were in addition to those existing under former contracts between it and the city; and in and by said ordinance an entirely new contract and agreement, superseding all prior contracts, was made between said city and the said railroad company with respect to the rates of fare which it should charge over its said line so to be made into a double-track through line from Superior and Water streets to the easterly limits of the city upon Euclid avenue; the agreement between the city and the railroad company with respect to the fare thereafter to be charged being as follows: That said company should operate the whole of said track as a through line, with through cars, and should charge and collect but one fare of not more than five cents for each passenger one way, in either direction, between the easterly limits of the city on Euclid avenue and the westerly terminus of said company's tracks at the intersection of Superior and Water streets; and that the company should run through cars over said line between the points last named, in either direction, as the public convenience in the opinion of the common council by resolution expressed should require, and that

the contract so made should be in force until the 20th day of September, 1904; which contract, having been so duly expressed by ordinance and accepted by said East Cleveland Railroad Company, became a valid contract between it and the city of Cleveland, by which said company agreed, in consideration of the grants therein made to it, to make the necessary expenditures contemplated in said ordinance with respect to the reconstruction of its tracks, and assumed and agreed to perform additional obligations in respect to paving, and agreed that it would operate said road in accordance with the terms of said ordinance until the 20th day of September, 1904; and that during such time it would carry passengers
10 at the rate of fare so fixed in said ordinance, to-wit: five cents for each passenger one way, in either direction, over said entire line; and in pursuance of said contract and in reliance thereon, the said company proceeded to construct its tracks as therein contemplated, at great expense, and to in all respects comply with the conditions of said ordinance; and, within the time contemplated by the ordinance, began the operation of a through line of cars in accordance with the terms thereof, and said company and its successor, your orator, have, ever since said time, fully complied with the terms and conditions of said last mentioned ordinance, and are now complying therewith, although said company thereafter voluntarily began the sale of tickets, good for passage, at a less rate than it was authorized to charge in said ordinance, to-wit: at the rate of eleven tickets for fifty cents.

10. Prior to July, 1888, the line of railway of the said East Cleveland Railroad Company had been operated by horse power, and at that date such progress had been made in perfecting the system of propelling cars by electric motors that the company was willing to incur the necessary expense of equipping certain of its lines with electricity, and there was at that time an earnestly expressed desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit. Thereupon the city council of the defendant city and the said East Cleveland Railroad Company entered into a still further contract, by ordinance duly passed and accepted, providing for the equipment and operation of said company's Euclid Avenue and Cedar Avenue lines by electricity; and in and by said ordinance and contract it was provided that the privilege of constructing the electric system and the operation of said lines thereby was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure the same, and that the right to
11 operate said line, after the expenditure of said large sum of money so necessary for its equipment, should be and remain in force for the period of twenty-five years from and after the passage of said ordinance, both upon the main line and what is known as the Cedar Avenue line of said company, and provided that nothing in the ordinance should be construed to authorize any increase of present fare for transportation over any part of said company's

lines; and your orator shows and alleges that, at the time of the passage of said ordinance and its acceptance by said company, *at* the rate of fare therein referred to, which was not to be increased, was, as hereinbefore set forth, five cents for each and every passenger carried in either direction over said lines; and it was in terms provided in said ordinance that its acceptance should be deemed an agreement with the said company, by which it agreed to perform all and singular the matters and things therein agreed by it to be performed. The council were also given permission in and by said contract to require the company thereafter to equip the entire length of its main and Cedar Avenue lines with electricity; and thereafter, in reliance, upon its said contract and the performance thereof by the city of Cleveland, said company proceeded, at the expense of many hundreds of thousands of dollars, to equip its said lines with electricity in pursuance of the terms of said ordinance.

11. Thereafter, the said East Cleveland Railroad Company, desiring to extend its street railroad upon certain streets of the city of Cleveland, and to make what was known thereafter as the Wade Park Avenue line, entered into another contract with the city of Cleveland, duly evidenced by ordinance passed and accepted, by the terms of which it was given authority to *contract* and operate said line known as the Wade Park Avenue line, the company agreeing in consideration thereof, to do certain additional paving
12 and to submit to various other requirements as in said ordinance expressed; and, with respect to the rate of fare to be charged by said company, it was in said ordinance and contract provided,—that no increase of fare should be charged by said company on any part of its main line or said extension, and that one fare, not to exceed five cents, or one of said company's tickets, should entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water street- to the easterly limits of the city; that, in compliance with the terms of said ordinance and contract, said East Cleveland Company constructed and placed in operation said Wade Park Avenue line, at great expense, and since said time said line had been operated at the rates of fare therein fixed, and, in all respects, the conditions of said ordinance complied with.

12. Up to and prior to May 29th, 1893, the said East Cleveland Railroad Company, the Broadway & Newberg Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company were engaged in the operation of their respective lines of road in various and different parts of the city of Cleveland, and, as authorized in various contract grants under which they had constructed their said lines of railway and were operating the same, each and all of said constituent companies were charging a cash fare of five cents, and that their right so to do was fixed by the terms of their respective contracts and agreements with the city, and there was not at any time, as respects any one of said constituent companies, power in the common council of the city

of Cleveland to in any manner compel said companies, or either one of them, during the existence of their respective grants, to reduce the cash fare to be charged by said companies, or either one of them, below a cash fare of five cents. Your orator also shows that each of said constituent companies operated its line of railway as an independent
13 line; that no system of transfers, except between the South Side and Brooklyn lines, from the line of one of said roads to the lines of others was in force; so that a passenger, having occasion to use more than one of said lines, was obliged to pay two fares of five cents each; and each and all of the grants under which said companies were so operating under the rights aforesaid, prior to the 29th day of May, 1893, are still in force and effect.

13. On or about April 11th, 1893, the said constituent companies in the next preceding paragraph mentioned entered into an agreement of consolidation, in conformity with the statutes of Ohio authorizing them so to do, and formed and organized your orator as a consolidated company, by virtue of which consolidation, as hereinbefore alleged, your orator at once became possessed of and vested with all and singular the property, rights, franchises and privileges of each and all of said constituent companies, and thereupon, upon sich consolidation being so effected, and it being the intention of your orator to thereafter operate said lines as one entire system and to give to the public in the city the privilege of riding over said system by a continuous passage for one fare, your orator applied to the common council of the city of Cleveland,—said council having, under delegated authority from the legislature, control of the public streets in said city,—for its concent and approval of the terms of said consolidation so far as they related to the maintenance and operation of said various lines and the rates of fare which should be charged by your orator, and, upon May 29th, 1893, said city council duly adopted the following resolution:

Resolved, That the council hereby consents to the consolidation of the East Cleveland Railroad Company, the Broadway & Newberg Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company, under the name of the Cleveland Electric Railway Company under the following terms and conditions:

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said con-
14 stituent companies and any line of any other of the said constituent companies within the limits of the city of Cleveland, and passengers on any of such lines paying one fare shall be entitled, without additional or extra charge, to be transferred to any other of said lines and have one continuous ride thereon for said nge fare.

The said Cleveland Electric Railway Company shall, within ten days after the adoption of -his resolution, file with the city clerk, in

writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be void."

And thereafter, upon the same date, in pursuance of the requirements of said resolution, your orator duly filed with the city clerk its written acceptance of the terms and conditions of the said resolution and its agreement to perform the same; and your orator shows that, ever since said resolution of May 29th, 1893, and its acceptance thereof, it has continued the operation of its said various lines of street railway, and has continued to charge only the same cash fare of five cents for each passenger, in strict compliance with each of the different contracts which each of the said constituent companies had with the city, and which are still in full force. And your orator adopted and put in force the system of transfers contemplated in said council resolution, and has, although not required so to do by the grants and contracts of the East Cleveland R. R. Co., kept on sale and accepted for passage tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar.

14. Your orator further shows that no one of the grants or contracts aforesaid, under which said constituent companies which formed your orator were authorized to operate their various lines of street railway and to charge a cash fare of five cents for each passenger carried thereon, has expired, but your orator alleges the fact to be that each and all of said grants and contracts are in full force and effect.

15. In December, 1893, your orator, desiring to extend its double track railway on Prospect street, which at that time ended at Erie street, to Ontario street, duly accepted an ordinance of the city of Cleveland authorizing it so to do, in which said ordinance it was provided that your orator, with respect to all the lines of railway which it was operating, should comply with the terms and conditions of the said resolution of said city council passed May 29th, 1893, approving said terms of consolidation, and hereinbefore set forth; and that it should, upon each of said lines, comply with the conditions of said last mentioned ordinance; that the grant so made to your orator has not yet expired, and since said last mentioned agreement, your orator has at all times complied with each and all of its requirements.

16. Your orator shows that no one of the grants under which it is operating its various lines of street railway expires before the year 1910, and it has, by the express provisions of its several contracts with the defendant, The City of Cleveland, the right to so operate its said lines during the period of said grants, and to charge a cash fare of five cents for each passenger carried; that, before the consolidation of said constituent companies, said East Cleveland Railroad Company was voluntarily selling tickets at the rate of eleven for fifty cents or twenty-two for one dollar, and your orator has sold, and is now so selling, tickets good for passage upon its lines, but your orator says that in no one of the agreements between the city and

the said East Cleveland Railroad Company, under which it is operating, is there any requirement that it shall so sell tickets, or that it shall accept anything but a cash fare of five cents, and there is no provision giving to the city council any right to require your orator to sell tickets at all for passage upon its cars on the lines of the said East Cleveland Railroad Company; and your orator shows and alleges that the said city council of the city of Cleveland has no rightful authority to require of your orator to sell tickets at all for passage upon its cars or to accept anything but a cash fare, so far as the lines formerly operated by the East Cleveland Railroad Company are concerned.

16 17. Your orator further shows that, notwithstanding the provisions of its several contracts with said city of Cleveland, and in direct violation of the same, the defendant, The City of Cleveland, acting by delegated power from the State of Ohio, by the action of its common council on the 17th day of October, 1898, passed an ordinance in the words and figures following, to-wit:

"*Ordinance No.* 22436.

By Mr. Cope.

An ordinance to provide for a diminution of the rate of fare, under section 6 of an ordinance passed September 15, 1879, entitled "An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland."

"Whereas, the city council of the city of Cleveland on the 15th day of September, A. D. 1879, passed an ordinance entitled "An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland," by which ordinance, the said East Cleveland Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double track street railroad, with the necessary switches, turntables and turnouts, as then maintained and operated, commencing on Superior street to and around the southwest corner of Monumental square to Euclid avenue, thence through said avenue to Erie street, thence through Erie street to Prospect street, thence through said Prospect street to Case avenue, thence through said Case avenue to Euclid avenue thence through and along said Euclid avenue to Willson avenue, subject to certain conditions and limitations as expressed in said ordinance, and,

Whereas, as a part of these conditions and limitations it was expressly ordained under section 6 in said ordinance, that said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said com-

pany may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient;" and

Whereas, the council does now deem it justifiable and expedient to diminish the rate of fare, therefore,

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines and all extensions thereof operated under the aforesaid grant to the said East Cleveland Railroad Company be and is hereby fixed at four (4) cents cash fare over the whole or any part thereof.

SEC. 2. For the better accommodation of the public, any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

17 That said ordinance has been signed by the mayor of the city and publication of the same has been made, and the said city and its mayor and other officials and members of its common council declare their intention to at once enforce against your orator compliance with the provisions of said ordinance, and that, by virtue of the statute in such cases made and provided, said ordinance goes into effect on Tuesday the first day of November, 1898.

18. Your orator further shows that said ordinance of October 17, 1898, so requiring it to carry passengers at a cash fare of four cents and to sell tickets at the rate of seven for twenty-five cents, is in direct violation and contravention of the contract obligations existing between your orator and said defendant, and the contract rights of your orator, in this,—that whereas, your orator is entitled, by virtue of its said contracts with the said city of Cleveland, to charge upon all of its said lines a cash fare of five cents until the expiration of its several grants, the provisions of said ordinance require your orator to accept a cash fare of four cents; and whereas, your orator is not required by and of said contracts made with the East Cleveland Railroad Company by said city to accept anything but a cash fare of five cents, said ordinance requires your orator, as respects the lines formerly operated by the said East Cleveland Railroad Company, to sell tickets, good for passage upon its cars, at the rate of seven tickets for twenty-five cents; and that said ordinance so passed by the city council of the city of Cleveland, if enforced, would impair the contract rights of your orator,—in violation of the Constitution of the United States.

19. Your orator further shows that the practical effect and operation of said ordinance is to reduce the rate of fare to be received by your orator to the rate of four cents for a cash fare and about 3.57 cents for ticket fare; that said fare

of four cents is an unusual and inconvenient rate of
18 fare; that there is no coin of that denomination, and that this fact will tend to increase the number of passengers who will travel upon ticket fare rather than cash; that experience in the operation of street railways has shown that where there is such a difference between ticket and cash fare and at such low rates, about 70% of passengers carried use tickets; so that practical effect, if said ordinance be enforced, your orator would be obliged to carry about 70% of its passengers at the rate of 3.57 cents, and not more than 30% of the passengers carried would pay four cents fare; whereby the gross receipts of your orator would be reduced more than one-fifth, and while its gross earnings would be thus reduced more than one-fifth, its operating expenses would remain the same, as no reduction can be made in the operating expenses by reason of the reduction of fare; that the result of compelling your orator to operate under said ordinance would be to diminish its net receipts at least 50%, which fact will appear by the following statement, which is an accurate statement of your orator's gross and net earnings for the years 1896 and 1897 under the existing rates of fare, and a statement of what such gross and net earnings would have been under the operation of said ordinance of October 17, 1898.

In the year 1897 your orator carried

20,735,388 passengers at five cents each.....	$1,036,769.40
13,093,741 " at eleven tickets for 50 cents.....	595,170.40
Receipts from other passengers.....	84.15
	$1,632,023.95

So that in the year 1897 the rate of fare per passenger was 4.781 cents.

Gross receipts '97.....	$1,632,023.95

Assuming that in the year 1897 the rates of fare sought to be fixed by said ordinance of Oct. 17, 1898, had been charged your orator's receipts would have been:—

From 20,735,388 passengers at 4 cts. each..	829,415.52	
From 13,093,741 at tickets 7 for 25 cts.	467,633.61	
19 From other passengers.....	84.15	
		1,297,133.28
A reduction of 20½% or.....		334,890.67

And the average rate of fare per passenger 3.80 cts.

In order to have made its gross receipts equal under the two ordinances, it would have been obliged to carry in 1897, 8,812,912 more passengers than it in fact did carry.

Assuming, as your orator says that may fairly be done, that the use of tickets under the proposed ordinance would largely increase, and that at least 70 % of the passengers who ride would purchase tickets, on the assumption that the proposed rates of fare had been charged in 1897, and that 70 % of the passengers who rode did so upon tickets, then the receipts of your orator would have been as follows:

From 10,148,739 passengers at 4 cents each.....	405,949.56
From 23,680,390 passengers at 7 tickets for 25 cts.....	845,728.21
	$1,251,677.77

a reduction of 23⅓ % and an average rate of fare per passenger carried of 3.67 cts.

And to have earned at this rate the gross receipts of your orator in 1897, it would have been obliged to carry 10,363,654 additional passengers.

Your orator's gross receipts in 1897 were.....	1,632,023.95
Its ordinary operating expenses.....	1,038,945.19
Its net receipts.....	593,078.76
At the rates of fare proposed in said ordinance of October 17, 1898, and assuming that 70 % of the passengers would have bought tickets and 30 % would have paid a cash fare of four cents, the company's gross receipts in 1897 would have been.....	1,251.677.77
Its operating expenses.....	1,038,945.19
Its net receipts.....	212,732.58

That is, for the year 1897, the company would have suffered a loss in income of the difference between $593,078.76 and $212,732.58, namely: 380,346.18 or 64 % of its net income.

20 The result of the operation of your orator's street railway system in 1896 and 1897, which were the years of largest receipts in the history of street railways in Cleveland, was as follows:

	Gross passenger receipts.	Operating exp. and interest.	Net for improvements, depreciation, and dividends.
1896.....	$1,634,841.65	$1,276,179.92	$358,661.73
1897.....	1,632,023.95	1,241,410.90	390,613.05

Your orator further shows that the rate of ticket fare established, or sought to be established, by said ordinance of October 17th, 1898, namely: seven tickets for twenty-five cents, is 3 4/7 cents, or 3.571, per passenger; and your orator shows that this rate is less than the

operating expenses and interest charges which it costs your orator to carry per passenger. Your orator's operating expenses and interest charges per passenger for 1896 and 1897 were as follows:

1896..... 3.73 cents.
1897..... 3.64 cents.

And your orator shows that *in the statement* above given as to receipts and operating expenses, nothing is included for depreciation, nor for interest on its capital stock, and nothing by way of a sinking fund which should be allowed by reason of the shortness of the franchises of the company, as hereinafter set forth.

20. Your orator further shows that, in addition to the expenses and charges entering into the statement of operating expenses, as hereinbefore stated, there is a recognized actual, and definite annual depreciation in the value of electric railway property of the character of the property of your orator, amounting *to* 7% to 15% per annum, according to the character of the property and material; that is to say, there is each year an annual depreciation upon the property necessarily in use by your orator of from 7% to 15%,
21 and in order to provide for this annual depreciation in the value of property, it is necessary that an annual expenditure or the setting aside annually of a fund equal to such depreciation be made.

21. Your orator further shows that, among the items of annual expenses which have, from the time of the formation of said several companies, required great outlays of money and for which your orator can in no way be reimbursed except as it is permitted to operate said properties at a fair and reasonable profit, is the item of street paving; that, under the provisions of most of the grants under which your orator is operating, it is required of the company to pave and keep in repair certain portions of the street occupied by your orator's tracks, and, during the twenty years last past, your orator shows that it has invested in said street paving, and as a consideration to the city for the grants made to it, in the aggregate the sum of more than $1,000,000.00.

22. Your orator further shows that, under the laws of the State of Ohio, it is not competent for councils of municipal corporations to grant rights to street railway companies for any period of time exceeding twenty-five years, and that all of the grants under which your orator is operating its line of railway were made to expire at the expiration of twenty-five years from the time the same were made; that the average time which your orator's several grants have yet to run before the termination thereof is about fourteen years, and that the rights of your orator in the streets upon one of its main lines expire in the year 1910; that at the expiration of such grants, much of the property of your orator will become greatly depreciated in value, and, in fact, much of it will be of but little substantial value

except as such value is dependent upon the ability of your orator or its successors to renew such grants; and, as to whether or not such franchises or any of them can be renewed, it is impossible to foretell. Your orator therefore says that, as a matter
22 of ordinary business prudence and legal fairness and justice in computing the cost of the operation of said railway properties and the reasonable income which the owners should receive *therefrom, there should* be provided each year out of the earnings of the company, in addition to its actual outlay for operating expenses and depreciation of its property, a sufficient sum as a sinking fund to retire its bonds and to indemnify the stockholders of the company against loss and impairment of the value of their stock upon the expiration of said franchises, so far as the value of said stock is dependent upon the continuance of said franchises; and your orator alleges that before it can truthfully be said that your orator is making a profit upon the operation of its road, a sufficient sum should be realized, in addition to the operating expenses, its interest, and the depreciation of the property, to set aside such annual sinking fund to provide for depreciation in the value of its property upon the expiration of its franchises.

And your orator shows and alleges that, based upon the actual experience of your orator in the operation of its said road, that if the said ordinance of October 17th, 1898, were put into operation and your orator compelled to operate its property in compliance with its terms, it would be impracticable and impossible to realize therefrom the actual cost to your orator of maintaining and operating such property, and that there would be left to your orator inadequate means to pay even the actual running expenses. Its bonds would become in default and its property be rendered valueless.

24. Your orator says that there is no certainty that the receipts of your orator, even at the present rate of fare, will be greater in the future than they have been in the past, or that they will even equal the receipts of the past few years; and there is no certain basis upon which to found an opinion that the lower rates
23 of fare provided for in said ordinance of October 17, 1898, would increase travel upon your orator's lines, and to so prophesy is to indulge in pure speculation without any substantial basis of experience upon which to make such an estimate; nor would it be practicable or possible, within the life of your orator's franchises, to have such an increase of travel as would enable your orator, under the provisions of said ordinance, to pay its ordinary operating expenses and any interest to the bondholders or profit whatever to its stockholders.

25. Your orator further shows that the cost to your orator of said various properties, upon the purchase of the same at the time of said consolidation of the said constituent companies, is represented by your orator's issue of $12,000,000 in stock and the bonded indebtedness at that time assumed, and that, upon such amount, your orator is entitled to earn and receive, in addition to the operating ex-

penses, including a proper allowance for depreciation and the establishment of a sinking fund to cover loss of property upon the expiration of its franchises, such an amount as will pay the interest upon its bonded debt, which averages about 5% per annum, and such a dividend upon its capital stock as it can earn at the rates of fare provided in said contracts with the city of Cleveland, such rates being, as your orator alleges, fair and reasonable; that, in the commercial markets, your orator's bonds are valued at and above par, while its stock has at present an established market value of from 75% to 80% of its par value, which prices fairly represent, as your orator alleges, the value of your orator's investment as the same is valued in the commercial markets for railway securities. Your orator says that very much of its stock and many of its bonds are held by companies and persons and estates which have purchased the same upon such basis of valuation and upon the faith of the contracts existing between your orator and said city of Cleveland.

26. Your orator alleges that, in ordinary business fairness
24 and legal justice, it is entitled to earn reasonable and fair dividends and returns upon the amount invested in its said railway system, and that, in any event, such returns to your orator, to be reasonable and fair, should not be less than a sum sufficient to provide for the payment of necessary operating expenses, paving, taxes, depreciation, reasonable maintenance and improvements, interest upon bonded and underlying indebtedness, reasonable dividends upon the outstanding stock, and an adequate annual contribution to a sinking fund to provide for the indemnification of the stockholders of said company against the annual depreciation upon their property in use, and against the loss or impairment of the value of their stock by the depreciation in the value of said railway property at the expiration of the company's franchises. And your orator alleges that, at the rates of fare fixed by said ordinance of October 17, 1898, its property could not be operated so as to realize for its owners any profit whatever upon the amount which has been actually invested therein.

27. Your orator further shows that the growth of the city of Cleveland will hereafter from time to time require extensions of the lines of your orator's railway, and new construction and improvements in the operation of the same, and that the expense of operation will necessarily increase with the growth of the city, and that the cost of construction and amount of investment must at the same time increase; that the motors and electrical equipment, as respects most of the cars in use by your orator, have been twice renewed since 1889, so that your orator is now using a third equipment of motors, that many cars which were in use and which were the best made at the time of their purchase and at the time of said consolidation are now obsolete and useless, and upon many of them your orator has not been able to realize above ten per cent. of their cost while many

of them have been discarded as being absolutely worthless,
25 your orator realizing nothing therefrom; that the standard of cars and motors and of the rails and other necessary material for the construction and equipment of street railways is constantly changing; that your orator and its predecessors have provided the most improved and modern means of travel, and, in the last eight or nine years of electrical operation, have necessarily made, as above stated, several complete changes in equipment and at great expense all of which has been done on the faith of the contracts under which said company has operated and the continuance of the rights therein granted to the full terms of the grants; and, in order to maintain said railway property in a proper state of efficiency and keep pace with growing improvements and invention, it will be necessary to expend large sums in renewals, changes in machinery, cars and appliances and methods of operation, in addition to the amount already represented by the outstanding stock and bonds of your orator.

28. Your orator says that the rate of fare which has heretofore prevailed, and which is provided for by your orator's existing ordinances and contracts, is no more than a fair and reasonable charge for the service rendered, and your orator alleges that the number of passengers carried will not be materially increased by virtue of the operation of said ordinance of October 17, 1898, reducing the fare as aforesaid, but that, on the contrary, the volume of its business will be materially reduced, and that there will be no compensation whatever to your orator for such reduction of fare by way of increased business.

29. Your orator shows that all of its property was acquired, built, reconstructed and improved, upon the best obtainable terms and prices and conditions, and that said lines of railway have been at all times, and are now, operated by your orator as economically as practicable, so that the operating expenses have been and are as reasonable and low in amount as they could be made by economical man-
26 agement; that the services of officers and employés of said company have been secured as cheaply as practicable for good service, and it has no more of such officers and employees than are necessary to conduct its business in an efficient and proper manner. Your orator has at all times yielded to public demand for increased and improved service, and, by extending said system throughout various portions of the city, outlying districts and sparsely settled portions thereof, the operation of several lines of your orator's railway, while a great benefit to the city, is and has been carried on at a great loss to your orator, greatly increasing the expense of operation of said system, and that the extensive scale upon which your orator is required to operate its said road to meet the demands and requirements of the city and people constantly requires large amounts for improvements and extensions. And your orator alleges that it is now giving, and has at all times during its operation of said railway properly given, to the people of

Cleveland a modern, improved, and well-conducted railway service, and that the prices which it is charging therefor are just and reasonable.

30. Your orator further shows that said ordinance of October 17, so undertaking to reduce the fare which your orator is entitled to charge as aforesaid, is void, because contrary to and in violation of the Constitution of the United States; that said ordinance, as hereinbefore shown, if enforced or put into operation and effect, does and will deprive your orator of its property as aforesaid without due process of law, and will take, and have the effect of taking, the property of your orator for public use without compensation,—in contravention and violation of the Constitution of the United States, and especially section 1 of article 14 of the amendments to the Constitution of the United States.

31. Your orator further shows that, before it could at law demonstrate the invalidity of said ordinance by adjudica-
27 tion upon the same, a multiplicity of suits would ensue, and great inconvenience and conflict and trouble would arise from the refusal of your orator to recognize the validity of said ordinance; that said ordinance will go into effect by its terms on November 1st, 1898, the expiration of ten days' legal publication thereof, unless said City of Cleveland be restrained therefrom by this court; and your orator will be compelled to submit to and carry out said ordinance unless the defendant be so restrained, and that if your orator should refuse to submit to and comply with said ordinance, in the absence of an injunction restraining its enforcement, the city, through its mayor, common council and law department, with their employees and representatives, will, as your orator is informed and believes and alleges, proceed to enforce said ordinance and put the same into immediate effect, and compel your orator to comply therewith by taking steps and measures to forfeit or attempt to forfeit the charter, franchises and privileges so owned by your orator for alleged violation of said ordinance of October 17, 1898; and institute, or cause to be instituted, suits or other proceedings against your orator, its officers, conductors, or agents, with the design of putting said ordinance into operation and effect, and of compelling your orator, its officers, conductors, and agents, to accept such cash fare of four cents, and to sell tickets, good for passage upon its cars, at the rate of seven for twenty-five cents; and upon your orator's refusal so to do, will make complaints and charges of violation of said ordinance and prosecute and institute proceedings to forfeit the charter, franchises and privileges of your orator, and to annul its corporate existence, for alleged violation of said ordinance. Your orator says that an attempted enforcement of said ordinance would result in personal conflicts and altercations between passengers and conductors, with consequent breaches of the public peace
28 and arrests and probable disturbance-, and that great and permanent loss of business and good will would follow from such conflicts and disturbances; that a multiplicity of suits would

arise on the part of the defendant city and its citizens and passengers on the roads of your orator, in different courts at the same time, and your orator will be put to great expense and trouble and loss in defending suits in various courts, leading to uncertainty or complications as to the rights of the said city of Cleveland and your orator in the premises; that public interest and welfare and the rights of your orator require the trial and adjudication of such rights and duties in one forum, and that, in equity and good conscience, your orator should not be subjected to the great loss, expense, inconvenience and damage to which it will be subjected by the enforcement, or attempted enforcement, of said alleged ordinance; and your orator says that it has no adequate remedy at law to protect itself against the enforcement of said ordinance.

In consideration whereof, and inasmuch as your orator is without remedy in the premises at law, and can have adequate relief only in a court of equity, to the end, therefore, that the defendant herein may answer the several matters and things hereinbefore set forth, and that this court may decree that said ordinance of said city, entitled: "An ordinance to provide for a diminution of the rate of fare under section 6 of an ordinance passed September 15, 1879, entitled "An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;" passed October 17, 1898, is null and void and of no effect with respect of your orator, and that said ordinance and the change of fare provided thereby and the provisions thereof are unreasonable, unfair, unconstitutional and void, your orator prays that the City of Cleveland and the mayor and the common council of said city, and all officers, agents, attorneys, employees, representa-
29 tives, and departments of said city and their respective agents, representatives and employees, and the director of law of said city and his associates and assistants and agents, and their respective successors in office, be perpetually enjoined, restrained and prohibited from, putting said alleged ordinance into effect, and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding, against your orator or any conductor or employee, or any officer, representative or agent of your orator, the object or purpose of, or relief sought by, said action, suit or proceeding, being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel your orator or any officer, representative, conductor or agent of your orator, to accept the cash fare provided for in said ordinance, or to sell tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof, and from instituting or prosecuting any action or proceeding for violation of said alleged ordinance or any part thereof, and from proceeding with or continuing any action or proceeding for violation of said alleged ordinance, or any part thereof, whether complaint be made or said action be instituted by or on behalf of said city of Cleveland or any other person; and from instituting,

directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any fine, penalty or forfeiture for violating said alleged ordinance or any part thereof; and from bringing any suit, action or proceeding for the purpose of vacating the charter or annulling the existence of your orator as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof, or any of its provisions.

And your orator prays that, in the meantime and during the pendency of this suit, said City of Cleveland, the mayor and
30 common council of said city, and all officers, agents, employees, representatives and departments of said city and their respective agents, representatives and employees, and the director of law and his assistants, representatives, agents and employees, be enjoined and restrained as hereinbefore prayed, and that your orator may have such other and further relief as the nature of the case may require and as to equity may appertain.

33. May it please to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this honorable court, directed to the said defendant, The City of Cleveland, commanding said defendant to appear in this court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND ELECTRIC RY. CO.,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

SQUIRE, SANDERS & DEMPSEY,
Counsel & Sol'rs.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Horace E. Andrews, being duly sworn, says that he is president of The Cleveland Electric Railway Company, the complainant in the foregoing bill-of-complaint; that he makes this affidavit as such officer on behalf of the said company; that he has read the said bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters stated upon information and belief, and as to those matters, he believes them to be true.

HORACE E. ANDREWS.

Sworn to before me by the said Horace E. Andrews, and
31 by him subscribed in my presence this 28th day of October, A. D. 1898.

WM. J. MEAD,
[SEAL.] *Notary Public.*

Endorsements on bill of complaint: No. 5840. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Bill of complaint. Filed Oct. 29, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, att'ys for compl't.

32 *Subpœna in Chancery.*

UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, }

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon the City of Cleveland, a citizen of and resident in the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the northern district of Ohio, aforesaid, at Cleveland, on the first Monday in January next, to answer a certain bill in chancery, filed and exhibited in said court, against it by the Cleveland Electric Railway Company, a citizen of and resident in the State of Ohio.

Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of October, A. D. 1898, and in the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk,*
By JNO. VAN NOSTRAN,
[SEAL.] *Deputy Clerk.*

Memorandum.

The said defendant is required to enter its appearance in this suit in the clerk's office of said court on or before the first Monday of December, 1898, otherwise the said bill may be taken *pro confesso.*

IRVIN BELFORD, *Clerk.*

33 Endorsements on subpœna—when issued: United States circuit court, northern district of Ohio. No. 5840. The Cleveland Electric Railway Company, *vs.* The City of Cleveland. Subpœna in chancery. Appearance day, first Monday in December, 1898. Answer day, first Monday in January, 1899. Squire, Sanders & Dempsey, complainant's attorneys.

Endorsements on subpœna—when returned:

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, *Northern District of Ohio,* } ss:

Received this writ on the 29th day of October, 1898, and on the same day I served the same at Cleveland, on the within named The City of Cleveland, by delivering a true and certified copy thereof to Robert E. McKisson, mayor and chief executive of said municipal corporation.

M. A. SMALLEY,
U. S. Marshal,
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Filed Nov. 1, 1898,

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

34 *Order to Show Cause, etc.*

October Term, A. D. 1898, to wit, October 29, 1898.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting under designation, and Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RAILWAY Company *vs.* THE CITY OF CLEVELAND. } No. 5840. Chancery.

Upon the filing of the bill of complaint herein, duly verified, and upon motion of complainant, it is ordered that the defendant, The City of Cleveland, appear in this court on the first day of December, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, and show cause why a temporary injunction should not be issued as prayed for in the bill of complaint herein. And it is further ordered that, in the meantime and until a determination of the court on said order to show cause as to whether a temporary injunction shall issue herein, the defendant, The City of Cleveland, the mayor and com-

mon council of said city, and all officers, agents, attorneys, employees, representatives and departments of said city and their respective representatives, agents and employees, and the director of law of said city and his assistants and representatives, be enjoined and restrained as in said bill of complaint prayed; and particularly from putting an ordinance in said bill of complaint described and entitled: "An ordinance to provide for a diminution of the rate of fare, under section 6 of an ordinance passed September 15, 1879, entitled: 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;'" passed October 17, 1898, into effect; and from instituting or authorizing or directing any suit or suits, action or actions, or any pro-
35 ceeding or proceedings, against the complainant or any conductor or employee or any officer or agent of the complainant, the object or purpose of which or the relief sought by which, is to put said alleged ordinance into effect or to enforce any of its provisions, or to compel the complainant or any of its officers, agents or employees to accept tickets or accept fares as in said ordinance provided; and from making any complaint for violation of said alleged ordinance on the part of complainant or any of its officers, agents or employees. And from instituting any suit or proceeding or action of any character whatever for the purpose of enforcing the provisions of said ordinance or subjecting the complainant or any of its officers, agents, servants or employees to any penalty or forfeiture or punishment for violation of said alleged ordinance or any part thereof; and until the court shall so determine the question of issuing a temporary injunction as prayed for in said bill of complaint, it is ordered that said ordinance of October 17th, 1898, shall not be binding upon or operative against said complainant. And it is ordered that complainant give bond in the sum of twenty-five thousand dollars to be approved by the clerk and conditioned according to law.

Certified Copy of Restraining Order.

THE UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, Eastern Division, }

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the fourth day of said month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred
36 and twenty-third, to-wit: on Saturday, the 29th day of October, A. D. 1899.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting under designation, and Augustus J. Ricks, U. S. district judge.

Among the proceedings then and there had, were the following, to-wit:

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

Upon the filing of the bill of complaint herein, duly verified, and upon motion of complainant, it is ordered that the defendant, The City of Cleveland, appear in this court on the first day of December, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, and show cause why a temporary injunction should not be issued as prayed for in the bill of complaint herein, and it is further ordered that, in the meantime and until a determination of the court on said order to show cause as to whether a temporary injunction shall issue herein, the defendant, The City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys, employees, representatives and departments of said city and their respective representatives, agents and employees, and the director of law of said city and his assistants and representatives, be enjoined and restrained as in said bill of complaint prayed; and particularly from putting an ordinance in said bill of complaint described and entitled: "An ordinance to provide for a diminution of the rate of fare under section 6 of an ordinance passed September 15, 1879, entitled: 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain
37 streets of the city of Cleveland;'" passed October 17, 1898, into effect; and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding or proceedings, against the complainant or any conductor or employee or any officer or agent of the complainant, the object or purpose of which, or the relief sought by which, is to put said alleged ordinance into effect or to enforce any of its provisions, or to compel the complainant or any of its officers, agents or employees to accept tickets or accept fares as in said ordinance provided; and from making any complaint for violation of said alleged ordinance on the part of complainant or any of its officers, agents or employees; and from instituting any suit or proceeding or action of any character whatever for the purpose of enforcing the provisions of said ordinance or subjecting the complainant or any of its officers, agents, servants or employees to any penalty or forfeiture or punishment for violation of said alleged ordinance or any part thereof; and until the court shall so determine the question of issuing a temporary injunction as prayed for in said bill of com-

plaint, it is ordered that said ordinance of October 17th, 1898, shall not be binding upon or operative against said complainant. And it is ordered that complainant give bond in the sum of twenty-five thousand dollars to be approved by the clerk and conditioned according to law.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States, within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original restraining order, entered upon the journal of the proceedings of said court in the therein entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

38 Witness, my official signature and the seal of said court, at Cleveland, in said district, this 29th day of October, A. D. 1898, and in the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk,*
By JNO. VAN NOSTRAN,
[SEAL.] *Deputy Clerk.*

Endorsements on order to show cause,—when issued: No. 5840. United States circuit court, northern district of Ohio, eastern division. The Cleveland Electric Railway Company, *vs.* The City of Cleveland. Certified copy of restraining order.

Endorsements on order to show cause,—when returned:

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

Received this writ on the 29th day of October, 1898, and on the same day, I served the same at Cleveland, on the within named The City of Cleveland, by delivering a true, and certified copy thereof to Robert E. McKisson, mayor and chief executive of said municipal corporation.

M. A. SMALLEY,
U. S. Marshal,
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Filed Nov. 1, 1898,

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

39 *Restraining Order Bond.*

Know all men by these presents, that we, The Cleveland Electric Ry. Co., and Horace E. Andrews, are held and firmly bound unto the City of Cleveland in the sum of twenty-five thousand dollars, to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 31st day of October, A. D. 1898.

The condition of the above obligation is such that, whereas the said The Cleveland Electric Railway Company, a citizen of the State of Ohio, has filed in the circuit court of the United States for the northern district of Ohio, a bill in chancery against the said The City of Cleveland, and has obtained an allowance of a restraining order as prayed for in said bill, from the Honorable Augustus J. Ricks, U. S. district judge, and a judge of said court.

Now if the said The Cleveland Electric Railway Company shall abide the decision of said court in said cause, and pay all moneys and costs which shall be adjudged against it in case the said restraining order shall be dissolved, then these presents shall be void; otherwise to remain in full force.

THE CLEVELAND ELECTRIC RY. CO.,
By HORACE E. ANDREWS, *Pres't.* [SEAL.]
HORACE E. ANDREWS. [SEAL.]

Endorsements on restraining order bond: U. S. circuit
40 court. Northern district of Ohio. No. 5840. The Cleveland Electric Railway Company *vs.* The City of Cleveland. Restraining order bond. Approved and filed Oct. 31, 1898, Irvin Belford, clerk.

Order Continuing Order to Show Cause.

October Term, A. D. 1898, to-wit, December 1, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

The parties consenting, it is ordered that the hearing on the return of the order heretofore issued to show cause why a temporary injunction should not issue as prayed for in the bill, be adjourned for hearing until the 17th day of December, 1898, at ten o'clock a. m., or as soon thereafter as counsel can be heard. It is further ordered

that, until the hearing and determination on said order to show cause of the question of the issue of a temporary injunction herein, the restraining order heretofore issued in this cause, be and the same is, continued in full force and effect.

Answer.

41 In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILway Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	# 5840. In Equity. Answer of the City of Cleveland.

The defendant, The City of Cleveland, saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in the bill of complaint herein, for answer thereto avers and says:

It admits that the complainant and the defendant are citizens of the State of Ohio, that the complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the city of Cleveland; and that the defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and that in respect to the matters and things set forth in the bill of complaint as to the ordinances affecting the complainant, this defendant acts and acted under delegated power from the legislature, except in so far as the last named admission may hereafter be expressly qualified. Further answering paragraph one of said bill defendant, while admitting, that, acting under delegated power from the legislature of the State of Ohio, it has passed and adopted ordinances granting to the complainant and its predecessors in interest the right to construct and operate the various lines of railway in said city, denies that—the alleged ordinances set forth and referred to in

42 said bill of complaint constitute contracts between complainant and defendant; as alleged in said bill; and denies that all the provisions of each and all of said alleged ordinances were within the powers of this defendant delegated to it by the legislature of the State of Ohio as hereinafter more specifically set forth.

Defendant answering paragraph two of said bill denies that the amount in controversy in this action, exclusive of interest and costs, is more than five thousand dollars, and denies that it is a controversy arising under the Constitution of the United States. It admits that complainant, by its bill, seeks relief, by reason of an attempt on the part of the defendant to enforce against complainant a law of the State of Ohio; but the defendant denies that the said law of the State of Ohio impairs the contract rights of the complainant, and it denies that the

operation of said law, if permitted, would take from complainant its property without due process of law and deny to it the equal protection of the law, in contravention and violation of the Constitution of the United States, or of section one of article fourteen of the amendments to said Constitution, or section ten of article one of said Constitution.

Defendant further answering admits that the complainant is a consolidated railway company formed in 1893 by the consolidation of the various constituent companies named in paragraph three of said bill. It says it is not informed, save by said bill, of the amount of the capital stock of complainant, or how much thereof is issued; but it denies that the capital stock of complainant is twelve million dollars, and denies that all of the same, or substantially all of the same is issued; it denies that the complainant has outstanding a bonded indebtedness, secured by mortgage on its property, aggregating $3,750,000 and a floating debt of about $250,000.

It denies that such mortgage indebtedness and floating debt to the amounts named in said bill, to wit: $3,750,000 and $250,000 respectively, represents money which has been invested in complain-
43 ant's property; and defendant alleges that the aggregate amount of said capital stock, bonded indebtedness and floating debt is far in excess of complainant's actual investment in money in its property and of the value of its property, either at the present time or at any time since complainant's organization; and defendant further says that said aggregate amount is also far in excess of the value of the property and actual money invested of all of the various constituent companies, which in 1893 formed by consolidation, the complainant company. And defendant alleges that a large amount, to wit, more than two-thirds of complainant's capital stock and bonded indebtedness is fictitious and watered, and is not based upon any value whatever; or upon any investment whatever.

It admits that by such consolidation, the complainant, became and is possessed of all the rights, franchises, privileges and property theretofore possessed by said constituent companies and each of them, but it avers and says that, by such consolidation, the complainant succeeded to, assumed, and thereby became and is subject to all the duties, obligations, liabilities, conditions, limitations and restrictions to which each and all of said constituent companies were and had been, subject to and which were and had been imposed upon them, and each of them, prior and up to the time of such consolidation.

Defendant admits as stated in paragraph four of said bill, that each of said constituent companies so consolidated, was operating its respective lines of street railway under ordinances passed by the city of Cleveland in pursuance of power delegated to it by the legislature of the State of Ohio; but defendant alleges that all of the provisions of said ordinances were not, did not become, and are not binding on said city for the reason that some of said ordinances were and are beyond the power delegated by the legislature of the

State of Ohio, to said city, were and are *ultra vires*, illegal and void as hereinafter stated.

44 Defendant admits that the East Cleveland Railroad Company was a corporation which had been in existence and operated lines of street railway in the city of Cleveland since about the year 1859 and at the time of said consolidation owned and was operating the several lines of street railway set forth and described in paragraph five of said bill. It says that it is not informed save by said bill, of the aggregate mileage of the lines of said East Cleveland Railroad Company, or as to whether or not said company constructed said lines of railway upon the faith of the grants from the city of Cleveland, and it therefore denies the allegations of said bill as to reference thereto and demands proof thereof.

Defendant denies that the city of Cleveland and said East Cleveland Railroad Company have or had agreed as to that portion of the terms and conditions for the operation, by said company, of its lines of street railway, relating to the rate of fare to be charged passengers for transportation over its lines, except that in and by its various grants, said city had limited said company to a rate of fare not to exceed five cents; but defendant avers the fact to be that said city at all times in and by said grants, expressly reserved to itself the right, at any time, to reduce or diminish the rate of fare whenever in the opinion of the council of the city it was deemed justifiable and expedient.

Defendant further answering says that the lines of said East Cleveland Railroad Company traverse the most populous and prosperous portion of the city, that in the territory so traversed complainant and its predecessors in interest, the East Cleveland Railroad Company, have operated said lines of street railway without competition for nearly forty years during which time said city has reserved to itself the right to diminish the rate of fare, without exercising that right until the passage of the ordinance of October 17th, 1898, hereinafter referred to.

45 Defendant further answering says, that it does not know and is not informed, save by said bill, as to the allegations contained in paragraph six of said bill and it therefore denies the same and demands proof thereof.

And further answering paragraph six and seven of said bill says, that under and by virtue of the laws of the State of Ohio and the ordinances of the city of Cleveland the rights, privileges and franchises of the East Cleveland Railroad Company to maintain and operate its lines of railway were limited to expire within certain specified periods of time, that on the date referred to in said bill, to wit: September 15th, 1879 said rights and franchises over the route described in paragraph seven of said bill, had nearly if not entirely expired and without an extension or renewal of the period of the life of such rights and franchises the said The East Cleveland Railroad Company, would, at or about said date, have been compelled to abandon the maintenance and operation of its said lines of

railway and would have been deprived of all the profits and emoluments accruing from the operation and maintenance of the same. And further answering defendant says, that on the 27th day of March, 1866, the legislature of the State of Ohio passed an act entitled "An act to amend "An act to provide for and regulate street railroad companies, passed April 10, 1861, and supplementary thereto" (Ohio Laws, vol. 58, page 66) which among other things provided that no ordinance, right or franchise to construct maintain or operate a street railway in any municipal corporation should be given or granted until the council or other legislative body of such municipal corporation should first advertise for and receive competitive bids for the construction, operation, and maintenance of the same; and that thereupon such right and franchise should only be granted to the person or corporation offering to carry passengers at the lowest rate of fare.

46 Defendant further says that said act has been in full force and effect as a law of the State of Ohio continuously ever since the 27th day of March, 1866, but that said The East Cleveland Railroad Company had avoided the competition as to rates of fare provided for in said law by reason of the fact that it had secured its original franchise from the city of Cleveland prior to the passage of said act.

For the benefit and in the interest of the East Cleveland Railroad Company, and other street railroad owners and operators similarly situated, on account of the near approach of the date of the expiration of their franchises, and for the purpose of enabling them to avoid the competition as to rates of fare provided for in the aforesaid act, the legislature of the State of Ohio passed another act, to wit: the act of June 12th, 1879, entitled "An act to amend section- four and five of chapter five, of division eight, of the act entitled "An act to amend, revise and consolidate the statutes relating to municipal corporations, to be known as title twelve, part one, of the act to revise and consolidate the General Statutes of Ohio," passed May 14, 1878. (O. L., vol. 75, page 359)," which among other things provided, that the council of any city of the first and second grade of the first class might by ordinance renew any street railway grant or franchise at its expiration for a period not to exceed twenty-five years from the date of such grant or renewal of a grant, upon such terms and conditions as they may consider conducive to the public interests.

In this situation the said The East Cleveland Railroad Company, for the purpose of securing an entirely new franchise for the purpose of providing against the consequences of the expiration of its then existing franchises, and for the purpose of avoiding and evading the law providing for competitive bidding and the granting of such franchises to the person or corporation proposing to carry passengers at the lowest rate of fare, applied to the council of the city of

47 Cleveland for a renewal of its franchise under the provision of said act of June 12th, 1879, and on the 15th day of Septem-

ber 1879 said council granted such renewal by ordinance referred to in paragraph seven of complainant's bill, for the period of twenty-five years from its date. Defendant avers and says that thereafter the said The East Cleveland Railroad Company commenced and continued the operation of its lines of road under and by virtue of the provisions of said ordinance of September 15th 1879. It avers that section six of said ordinance is as follows:—

"SECTION 6. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages: the council, however, reserves to itself the right to hereinafter increase or diminish the rate of fare as it may deem justifiable and expedient."

Section thirteen of said ordinance is as follows:—

"SECTION 13. That in case of failure, by neglect or otherwise, on the part of said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance together with all and singular the general ordinance and the future ordinances of the city in relation to said road the privileges hereby granted and renewed, shall become void and of no effect, and shall cease upon the adoption of a resolution of the council to that effect."

That section fourteen of said ordinance is as follows:—

"SECTION 14. The franchise herein mentioned is granted on the condition that the council shall have the same power to regulate the fares to be charged on the road operated by said East Cleveland Railroad Company east of Willson avenue, and to regulate the operation of said last named portion of said road that is herein provided for as to the portion west of said Willson avenue, leaving the contract made between said company and the village of East Cleveland unaffected in all other respects."

Therefore defendant says, that in and by said ordinance the
48 city reserved to itself the right to reduce and regulate the rate of fare to be charged by said company on its lines both east and west of Willson avenue.

Defendant further answering admits the passage by the council of the city of Cleveland, of an ordinance of April 4th 1883, referred to in paragraph eight of the bill, and it avers and says, that section four of said ordinance reads as follows:—

"SECTION 4. That the council reserves to itself the right to hereafter increase or diminish the rate of fare between the west end of its, said company's, lines in Superior street and the city limits as it may deem justifiable and expedient, and that said company may be required to keep in order the pavement and roadway ten feet in width along its track and cross-walks to the full width of the streets through which said road passes, under direction of the street commissioner."

Defendant for answer to paragraph nine of the bill, or to such part thereof as it may be advised is material says, that it denies that by the terms of said last mentioned ordinance the relations between

the city of Cleveland and the East Cleveland Railroad Company were changed as in said paragraph alleged and defendant alleges that said company had agreed to and was under obligations to run all its cars as through cars from the westerly terminus of its line to the easterly terminus thereof on Euclid avenue. It admits the passage of the ordinance of March 15th, 1886, but denies that the same constituted a new contract between the city and said company as to any portion of said company's lines; it denies that the obligations imposed on said company by said ordinance were in addition to those existing under former ordinances; denies that in and by said ordinance an entirely new agreement superseding all prior contracts was made between said city and the said railroad company with respect to the rates of fare which it should charge over its said line from Superior and Water streets to the easterly limits of the
49 city on Euclid avenue, and it denies that the rate of fare was fixed in said ordinance, or in any other ordinance. Defendant avers that section four of said ordinance is as follows:—

"SECTION 4. That the rights, as herein granted and conferred are upon the express conditions, however, that said company shall charge and collect one fare of not more than five (5) cents for each passenger one way, in either direction, between the easterly limits of the city on Euclid avenue, and the westerly terminus of said company's tracks at the intersection of Superior and Bank streets; and upon the further condition that said company shall run through cars over said line between said points last named in each direction, as the public convenience in the opinion of the common council, by resolution expressed, may require."

Defendant further answering says that in addition to the provisions of the act of the legislature of the State of Ohio, of date June 12th, 1879, hereinbefore recited it was further provided in and by said act that after the grant or renewal of a grant, therein provided for, was made, the council should not have power and were expressly prohibited from releasing the grantee from any obligation or liability imposed by the terms of such grant or renewal of the grant. It says that at all times after September 20, 1879 the said The East Cleveland Railroad Company was operating its said lines under and by virtue of the ordinance of September 15th 1879 granting it a renewal of franchise, and that neither the ordinance of April 4th 1883, nor the ordinance of March 15th 1886, nor any other ordinance either prior or subsequent thereto released, or were intended or understood to release, said company from any of the provisions and conditions of sections six, thirteen and fourteen of said ordinance of September 15th 1879; that neither the ordinance of April 4th 1883 nor the ordinance of March 15th, 1886, nor any other ordinance, waived, superseded, affected or diminished the right and
50 power of the city to reduce the rate of fare reserved to it under the provisions of the ordinance of September 15th 1879, and that under and by virtue of the limitations heretofore referred to in the act of the legislature of the State of Ohio the council of the city

of Cleveland had no power to release said company from the operation of any obligation or liability imposed by the terms of said ordinance, and any such release or attempted release is *ultra vires*, illegal and void.

Further answering defendant says, that in and by said ordinance of April 4th 1883 said East Cleveland Railroad Company was granted the right to extend its tracks by building an additional track on Euclid avenue from Willson avenue, east to Fairmount street; and that in and by said ordinance of March 15th 1886 said company was granted the right to further extend its tracks on Euclid avenue easterly to the city limits; that under and by virtue thereof said company constructed and operated such additional tracks from Willson avenue easterly to Fairmount street and thence easterly to the city limits as *extensions* of their line from Superior and Water streets to Willson avenue.

That said company constructed such extensions for its own benefit and sought and solicited the privilege of constructing the same from the council of the defendant city, on account of the increased traffic and patronage such extension would bring to it.

Defendant says that the ordinances for such extensions were passed by the council of defendant city under authority of an act of the General Assembly of the State of Ohio passed May 7th 1869 entitled "An act supplementary to an act supplementary to an act to provide for and regulate street railroad companies; passed March 27 1866 (S. & C., 137, and S. C., 290, 281)" (vol. 66, Laws of Ohio, page 140) providing for such extensions, but in and by which it was expressly provided that the charge for carrying passengers
should not be increased over the whole or any part of the
51 main line so extended or on or over its connections with existing lines by consolidation.

Defendant avers that by virtue of the aforesaid act and by operation of law it became and was the duty of said East Cleveland Railroad Company, after the construction of such extension to give passengers one continuous ride for one fare over the whole of said line as extended, viz: from the westerly to the easterly terminus of said company's line as extended, and *vice versa*.

That in so far as said ordinance undertook to make a contract with said company that passengers should be carried from one end to the other of said line as extended for one fare the same is and was without consideration on the part of the city; and defendant avers that giving passengers one continuous ride for one fare, between the points named, was no part of the consideration for which such extension grants were made—the same having been provided for by the laws of the State of Ohio.

Defendant further says, that under and in pursuance of an ordinance, passed February 20th 1882 by the council of defendant city, what is known as the Cedar Avenue line was constructed by said The East Cleveland Railroad Company, as an extension of its main or Euclid Avenue line under the same conditions and regulated by

the same law as to a continuous ride from one end to the other of said company's line, as extended, as said first named extensions were made.

Defendant for answer to paragraph ten of said bill admits that prior to July 1888 the lines of railway of the East Cleveland Railroad Company had been operated by horse power, and that thereupon by ordinance of July 13th 1888 said company was granted permission to equip and operate its Euclid and Cedar Avenue lines by electricity; but it denies that the privilege of constructing the electric system and the operation of said lines thereby was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure
52 the same; it admits that in and by said ordinance it was provided that the right to operate said line should be extended for the period of twenty-five years from the date thereof; but it says that the council of the city of Cleveland was without power, at the most, to make such extension beyond September 20th, 1904 being the date of the expiration of the renewal grant of September 15th 1879 hereinbefore referred to.

Defendant says that section one of said ordinance of July 13th 1888 is as follows:—

"SECTION 1. Be it ordained by the city council of the city of Cleveland, That, whereas, the East Cleveland Railroad Company *is* operating a street railway under and by virtue of certain ordinances of the city upon Euclid avenue and also upon Cedar avenue in said city, *have*, by a communication to the common council of date May 14th, 1888, signified its willingness and desire to change the motive power upon said Euclid avenue and Cedar avenue between certain points in such communication designated; and

Whereas, there is a desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit and that an electric system be substituted for animal power for the movement of cars; wherefore the East Cleveland Railroad Company is hereby granted permission to erect and maintain poles and wires and the necessary appliances and fixtures for conducting currents of electricity for the purpose of transmitting and producing motive power to propel and operte the cars upon the following named streets in said city, towit: Euclid avenue from Willson avenue easterly to the city limits, Cedar avenue from a point near the Cleveland & Pittsburgh Railroad Company's right of way in said avenue easterly to a point about 1,500 feet east of Fairmount street. The erection of such poles and the placing of wires thereon shall be under the supervision of and subject to
53 the control of the city civil engineer; such poles shall not be over twenty-five feet in height above the ground and shall not be over six inches in diameter at the base, shall be painted in dark color, and repainted from time to time as the board of improvements may direct; they shall be 125 feet apart, *accept* otherwise expressly permitted by the city civil engineer; such poles shall be

placed at such points near the curb stone as shall be designated by the city civil engineer; should it become necessary, in the prosecution of any work by the city, that such poles should be temporarily moved such removal shall be made by said company and such poles shall be reset at its own cost, without any claim or damage therefor on the part of said company, and such company shall use such precautions for safety from time to time as the board of improvements may direct or require."

That section five thereof is as follows:

"SECTION 5. The said permission herein given is upon the condition that this grant shall be exercised within the period of six months from the passage hereof, and is also granted with all the privileges and subject to all the conditions of this ordinance and of the several ordinances by which the East Cleveland Railroad Company is permitted to lay rails and operate cars thereon in the streets of the city of Cleveland, so far as not inconsistent herewith and to the ordinance governing street railroads and all the ordinances in amendment thereof and in addition thereto. "And that said railroad company shall, whenever it becomes necessary to pave or repave the streets along its line, pave or repave and keep in constant repair for a single track 7 feet of the pavement, and for a double track 16 feet."

That by section six of said ordinance it is provided that "nothing herein shall be so construed as to authorize any increase of the present fares for transportation over any portion of said company's lines" thereby remitting the question of fares to the ordinance then in force governing the same, viz: the ordinance of September
54 15th 1879.

Defendant says that said ordinance did not and does not fix the rate of fare, and did not, and does not waive or surrender the right of the city to regulate the rates of fare reserved to it under the ordinance of September 15th, 1879; and furthermore the council of said city had no power to waive or surrender such right.

Defendant further says prior to July 13th 1888 the said East Cleveland Railroad Company was exceedingly desirous of changing the street car service upon its lines from animal power to electric motive power for the reason among others that the operation of such lines by electricity instead of animal power would be less expensive and that the said company would make a large saving thereby and would be able to furnish service to the citizens of the city of Cleveland at a much less expense thereby greatly increasing its profits; that the operation of said lines by electricity would be the means of providing a more rapid mode of transit and enable said company to carry more people in a shorter space of time, and at less expense, and thereby increase the patronage and profit of said company; and inasmuch as the ordinance under which said company was then operating its lines of railway permitted only the use of animal motive power said company solicited from the council of said city the passage of the ordinance authorizing it to use electricity as a

motive power, and thereupon in pursuance of such solicitation, and without any consideration therefor the council of the city adopted said ordinance granting to said company the right and license to equip and operate said lines with electricity and to erect the necessary poles, wires and equipments for the purpose of generating and using such electricity.

For answer to paragraph eleven of said bill defendant admits the construction of the Wade Park Avenue line under an ordinance
55 of the city of Cleveland and that it was in and by said ordinance provided, "that no increase of fare shall be charged by said company on any part of its main line or of said extension, and but one fare not exceeding five cents, or one of said railroad company's tickets, shall entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water streets to the easterly limits of the city," but it denies as stated in said bill that the rate of fare was fixed in and by said ordinance, or that the city's right to reduce the rate of fare was waived, surrendered or affected by said ordinance.

Defendant says that said Wade Park Avenue line was constructed as, and was in fact an extension of, said company's main or Euclid Avenue line, and that giving passengers a continuous ride from one end of said company's line to the other as extended by either the Wade Park Avenue extension, or the Cedar Avenue extension, or by any other extension, was no part of the consideration for or on account of which said extensions were granted or constructed the same having resulted by operation of law from granting the right to construct and from the construction of said extensions. Defendant further says that each and every one of the ordinance hereinbefore referred to provide expressly that the East Cleveland Railroad Company shall comply with all the provisions of the general ordinances of the city of Cleveland regulating the construction, operation, and maintenance of street railroads, with all amendments thereto, and that said company should abide by and perform the further and future ordinances and orders of the council of said city; and that said provisions entered into and became a part of each and every grant made by the city to said company.

For answer to paragraph twelve of said bill, defendant admits that on and prior to May 29th, 1893, the said The East Cleveland Railroad Company, The Broadway and Newburgh Street Railway
56 Company, The Brooklyn Street Railroad Company, and The South Side Street Railroad Company were engaged in the operation of their respective lines of road in various and different parts of the city; admits that each and all of them were charging a cash fare of five cents over their respective lines of railway but defendant denies that any one of said constituent companies were authorized to charge said cash fare of five cents in any such manner, or to such extent, that the council of the city did not have the right to reduce said rate of fare.

Defendant denies as stated in said bill, that their right to change

said cash fare of five cents was fixed by the terms of their respective alleged contracts and agreements with the city, and alleges that said right was not then, or at any time prior thereto, fixed.

Defendant denies that there was not at any time, as respects any one of said constituent companies, power in the council of the city of Cleveland to in any manner compel said companies, or any one of them, during the existence of their respective grants to reduce the cash fare to be charged by said company, or either one of them, below a cash fare of five cents; but on the contrary defendant avers that there was at all times power in the council of the city of Cleveland to compel said companies, or any one of them. during the existence of their respective grants, to reduce the cash fare to be charged by the said companies, or either of them, below a cash fare of five cents.

It admits that each of said constituent companies operated its lines of railway, as an independent line; admits that there was a system of transfers between the South Side and Brooklyn lines, as stated in paragraph twelve of said bill; and defend- denies each and every other allegation contained in paragraph twelve not herein specifically admitted or denied.

57 And for answer to paragraph thirteen of said bill, this defendant admits that on or about April 11th 1893, said constituent companies entered into an agreement of consolidation in conformity to the statute of Ohio authorizing them to do so, and formed by such consolidation the complainant company ; and that by virtue thereof the complainant company at once became possessed of and vested with all the property, rights, and privileges of each and all of said constituent companies as alleged in said bill. But defendant alleges that said complainant company upon said consolidation, assumed, became and was, subject to all duties, liabilities, conditions, limitations, restrictions, and obligations, imposed upon, and to which each and all of the said constituent companies had been subject prior to and at the time of such consolidation.

It says that it admits that said complainant applied to the council of the city of Cleveland for its consent and approval of the terms of said consolidation, but that it is not informed, save by said bill, as to the intention of complainant in making such application to said council; and it therefore denies the same and demands proof thereof. Defendant says that the application above referred to is in the words and figures following: (Council Proceedings, 1893, April 17 to April 16, 1894, page 30).

"CLEVELAND, O., *May* 22, 1893.

To the honorable city council of the city of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, 1893, by the consolidation of the East Cleveland Railroad Company and the Broadway and Newburgh Street Railroad Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of

the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid
58 in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accom-odate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride, and that its aim has been, and will be, to give its patrons vastly improved service and accom-odation by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC
RAILWAY CO.,
By HORACE E. ANDREWS,
Vice President."

Defendant admits that upon said application being made to and filed with the council of said city, said council thereupon adopted a resolution set forth in paragraph thirteen of complainant's bill; and defendant denies each and every other allegation contained in paragraph thirteen of said bill, not herein expressly admitted or denied.

And further answering defendant says, that on the 1st day of May 1891, the legislature of the State of Ohio passed an act entitled "An act supplementary to section 2505 of the Revised Statutes, providing for the leasing, purchasing and consolidation of street railroads," which among other things provided the method,
59 manner, terms and conditions upon which street railroads could be consolidated; and it further provided that whenever such consolidation is made as herein provided there shall be no increase of the existing rate of fare by reason of such consolidation nor shall any fare be charged upon any of the separate routes so consolidated in excess of the fare charged on such separate routes prior to the consolidation thereof. And provided that when any such consolidation is made as herein provided the fare charged for one continuous route or ride over all such consolidated lines shall not exceed the maximum fare charged over any one of said lines prior to such consolidation.

Defendant further answering avers and says that the complainant company was organized as a consolidated company under and in pursuance of the act named above, and by reason of its organization became, and was, and is, subject to all the conditions and limitations imposed by said act, and other laws of the State of Ohio; that the application of complainant to the council of the city of Cleveland above set forth and the resolution adopted by the council of the city, herein referred to, neither enlarged nor diminished the rights, privileges, duties, or liabilities of either the complainant company or the city of Cleveland. That the adoption of said resolution was and is wholly without consideration, was and is, null and void. That the duties of the complainant company to give passengers one continuous ride over all such consolidated lines for one fare, not to exceed the maximum fare charged over any one of said lines prior to such consolidation, was fixed by the statute of the State of Ohio, and became an obligation upon the complainant immediately upon such consolidation taking place.

And defendant further says, that the right of the city to reduce or diminish the rate or rates of fare over any one or all of complainant's lines of railway was not affected or waived by the resolution hereinbefore referred to, or by any other resolution, order, ordinance or act of the council of said city.

60 And for answer to paragraph fourteen of said bill defendant admits that whatever grants or ordinances the constituent companies, which formed complainant were operating their various lines of street railway under at the time of the consolidation are still in force.

It denies that by said grants said constituent companies were authorized to charge a cash fare of five cents for each passenger carried, as charged in said bill, and says, that the defendant city had at that time, and always had the right to reduce or diminish the rate of fare on said constituent companies' lines below five cents.

For answer to paragraph fifteen of said bill defendant admits the passage of an ordinance, by the council of the city of Cleveland, authorizing the complainant company to extend its double track railway on Prospect street from Erie street, to Ontario street, and along certain parts of Seneca, Lake, and Ontario streets. It says, however, that said ordinance was passed on July 17th, 1893 instead of December, 1893 as alleged in said bill.

Defendant alleges that section eight of said ordinance is as follows:—

"SECTION 8. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city relating to street railroads, now or hereafter enforced, shall work a forfeiture of this grant, and the rights and privileges thereby granted shall become null and void, upon the adoption of a resolution by the council to that effect. Nothing in this ordinance contained shall be held to release said company from any of the conditions of any of the

grants heretofore made by the city to any of said constituent companies."

Defendant alleges that the constituent companies referred to in the preceding section were and are the East Cleveland Railroad
61 Company, the Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railway Company, and the South Side Street Railroad Company.

Defendant further says that on the 19th day of August 1895 the council of the city of Cleveland passed an ordinance granting permission to the complainant to extend its lines from the junction of Miles avenue and Broadway to Woodland Hills avenue, and across Gates and McConnell streets; and that by section seven of said ordinance it was provided, that said company, to wit, the complainant, should comply with all further and future regulations made by the council of the city with reference to the operation of said company's lines of railway; and that said ordinance was accepted by the complainant; that said extension was constructed and has ever since been operated thereunder.

That on the 21st day of October, 1895 the council of the city of Cleveland passed an ordinance granting to the complainant permission to extend its double track street railroad from the junction of Carabelli street and Euclid avenue easterly to the easterly limits of the city of Cleveland. That section four of said ordinance is as follows:—

"SECTION 4. The rights and privileges herein granted shall be subject to the provisions of the general street railroad ordinances, so far as the same may be applicable, and not inconsistent herewith, and such further and future regulations as may be ordered by the council; and subject also to the provisions of the special ordinance under which the East Cleveland Railroad Company was authorized to construct and operate its road to its present terminus at Carabelli street."

That Carabelli street referred to in said ordinance was, at the time of the last extension granted to the East Cleveland Railroad Company hereinbefore referred to, the easterly limit of the city of Cleveland, but that thereafter the easterly limits of said city were extended; and that the extension provided for in this ordinance was to extend from the former to the present easterly limits
62 of the city. That the complainant constructed the extension above referred — under and by virtue of said ordinance and has ever since maintained and operated its line of railway thereon and thereunder, and accepted all the provisions and conditions of said ordinance.

That on the 21st day of September 1896 the council of the city of Cleveland passed an ordinance granting to the complainant permission to extend its Euclid Avenue main line of street railroad across Deering, Stearns and Fairchild streets. That section eleven of said ordinance is as follows:

"SECTION 11. The rights and privileges herein granted shall be

subject to the provisions of the general street railway ordinances, or so much of the same as may be applicable and not inconsistent herewith, and such further and future ordinances as the council and the board of control may prescribe."

That under and in pursuance of said ordinance complainant constructed said extension, and has ever since maintained and operated their lines of railway thereon and thereunder, and accepted all the conditions thereof.

Defendant further answering says that each and all of the various ordinances herein referred to relating both to the East Cleveland Railroad Company and to the Cleveland Electric Railway Company, contain provisions and conditions to the effect that said companies should abide by, and perform, and be subject to, all and singular the conditions of all the general ordinances of the city of Cleveland relating to street railroads; and it was expressly understood and agreed in each and all of said ordinances and grants that the said The East Cleveland Railroad Company and the said The Cleveland Electric Railway Company, the complainant herein, should abide by, be subject to, and perform all and singular the further and future orders and ordinances of the council of the city of Cleveland in relation to their railroads and the operation thereof; and that the complainant herein and its predecessor the East Cleveland Railroad Company, accepted each and all of
63 their grants subject to the said provisions and conditions, and they further agree to abide by and conform to the further and future ordinances and orders of the council with reference to their said roads and grants.

And for answer to paragraph sixteen of the bill defendant denies as therein stated, that no one of the grants under which it is operating its various lines of street railway expires before the year 1910.

It denies that the complainant has the right to operate its lines during the period of these grants and to charge a cash fare of five cents for each passenger carried.

It admits that prior to the consolidation the East Cleveland Railroad Company was selling tickets at the rate of eleven for fifty cents, or twenty-two for one dollar, but denies that said company was selling such tickets voluntarily.

Defendant avers that for a period of a few months, immediately preceding such consolidation said company was selling tickets at the rate of six for twenty-five cents.

It admits that the complainant has sold, and is now selling tickets good for passage upon its lines; and it alleges that under and by virtue of the provisions of the various ordinances under which complainant is operating its respective lines the council of the city of Cleveland has a right to require complainant to sell tickets for a passage upon its cars over the former lines of the East Cleveland Railroad Company; and that the city of Cleveland has a lawful right and authority to require complainant to sell tickets for passage

upon its cars and particularly so with reference to the line formerly operated by the East Cleveland Railroad Company.

And for answer to paragraph seventeen of the bill defendant admits the passage by the council of ordinance number 22436, by Mr. Cope, on the 17th day of October 1898; and admits as stated in paragraph seventeen of said bill, that in passing said ordinance the council of the city of Cleveland acted by delegated power from the State of Ohio; but defendant denies that said ordinance was
64 in violation of the several contracts between complainant and its predecessor in interest, the East Cleveland Railroad Company, and the city of Cleveland, or that it was in violation of any contract or ordinance between said party.

Defendant admits that said bill contains a correct copy of said ordinance; admits the signing, the publication thereof, and the intention of the mayor and other officials of the city of Cleveland to enforce compliance with the provisions of the same against complainant and that the same went into effect on Tuesday November, 1st, 1898, as alleged in said bill.

Defendant denies each and every allegation contained in paragraph eighteen of complainant's bill; and for answer to paragraph nineteen admits, that the practical effect and operation of said ordinance of October 17th, 1898 is to reduce the rate of fare to be received by complainant on the lines affected by said ordinance to the rate of four cents for a cash fare and about 3–57/100 cents for a ticket fare.

It admits that there is no coin of the denomination of four cents; and defendant denies each and every other allegation centained in said paragraph nineteen of said bill. And defendant denies each and every allegation contained in paragraph twenty of complainant's bill. And for answer to paragraph twenty-one admits that under the provisions of some of the grants under which complainant is operating, it is required to pave and keep in repair certain portions of certain streets occupied by its tracks; but defendant denies that during the last twenty years that complainant has invested in said street paving and in performance thereof the sum of one million dollars; and denies each and every other allegation contained in paragraph twenty-one of complainant's bill not hereinbefore expressly admitted or denied.

And further answering defendant avers, that during the last twenty years complainant and its predecessors in interest have not expended more than $— in street paving; and that the
65 paving so done was for the benefit of said companies being confined to the space occupied by and between and adjacent to the rails and tracks of their respective lines of railway. That the operation of such railways involved considerable wear and tear on the pavements and streets and said companies were only required to do and only in fact did, such paving as was necessary owing to the added wear and tear thereof resulting from the operation of their lines of railway.

And for answer to the matters and things set forth in paragraph twenty-two of complainant's bill defendant admits that under the laws of the State of Ohio it is not competent for councils of municipal corporations to grant rights to street railroad companies for a period of time exceeding twenty five years. And defendant denies each and every allegation contained in paragraph twenty-two of said bill not hereinbefore expressly admitted or denied.

And defendant further denies each and every allegation and statement in paragraphs twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, and thirty of complainant's bill. Further answering the various matters and things set forth in complainant's bill defendant says that it is not informed save by said bill, as to the present market value of complainant's stock; but it says that the aggregate amount of such capital stock at the market value alleged in complainant's bill is largely in excess of the actual money invested by complainant in its property, and that the same is largely in excess of the actual value of said complainant's property; that a large proportion of the capital stock of complainant company, towit; more than two-thirds thereof, and a large proportion of the bonds issued by it are fictitious and represent no value whatever; that the same is not, and has not at any time been based or issued, either upon the actual money investment of complainant, or upon the actual value of complainant's property.

66 And defendant avers that at all times during the issuance, sale and distribution of complainant's capital stock, and the sale of its said bonds, the council of the city of Cleveland had full and complete right and authority to reduce and diminish the rate of fare to be charged by complainant over its respective lines of railway, and had the further right to compel said company to sell tickets and accept the same for passage over its said lines; and it denies each and every allegation contained in said bill to the effect that the purchaser of said stock and bonds purchased and hold the same upon the faith of contracts to the effect that the city would not and could not reduce said rate of fare.

This defendant further answering says, that in the control and management of its business and property the complainant has been guilty of gross mismanagement and extravagance; that it has employed and maintained a large corps of officers at extravagant salaries, and has used a part of its income for political and other purposes, inconsistent with its charter, and its rights under the ordinances of the city of Cleveland thereby greatly increasing its annual expenditures.

This defendant expressly denies that the fare or rate of fare fixed by said ordinance of September 17th, 1898 is unfair, unjust, unreasonable, or confiscatory; and alleges and avers that said fare or rate of fare, would, if put into effect by the complainant, prove to be sufficient to enable said complainant to pay all the expenses of operating and maintaining its lines of railway, pay all its fixed charges, and earn a fair and reasonable compensation upon all moneys invested in its street railway system.

And further answering defendant denies that any annual provision or fund should be set aside for any so called depreciation in the value of the property of the complainant company, and alleges that any and all depreciation of the property of complainant is fully met and provided for by way of repairs and replacements from
67 time to time, and from year to year, and is included in the annual expenses of complainant; and complainant's property and equipment is fully kept intact and its standard of efficiency and value maintained by the repairs and replacements which take place necessarily from the operation of its lines of railway, and defendant denies that a sinking fund should be created and set aside out of the earnings of said company to indemnify the stockholders of said company against the loss or expiration of its franchise; and avers that on the contrary, inasmuch as the stockholders of said company and of the several street railway companies which, by consolidation, formed the complainant company well knew, or ought to have known, at the time of the purchase of their stock that the duration of the ordinance or licenses under which said companies operated its street railways in the city of Cleveland was limited, and had or would cease or terminate at a certain specified time, and made their investment accordingly there is no reason, justice or equity which would require the making and setting aside of such provision or fund.

And as to the allegations of that part of complainant's bill referring to the further growth of the city of Cleveland defendant says, that there is no duty, or obligation, upon the part of the complainant company to construct, and operate extensions of its lines so as to keep pace with such growth; nor is there any duty or obligation on the part of the city to permit complainant company to so construct and operate such extensions.

And further answering defendant says, that for the last forty years, during which complainant and its predecessors in interest have operated their lines of street railway in the city of Cleveland, said city has increased in population from forty-three thousand in 1859, to nearly four hundred thousand at the present time.
68 That said growth has been gradual and continuous, and that during all that time the complainant company and its predecessors in interest have solicited from the council of the city the privilege of extending its lines from time to time, so as to secure the added patronage and increase- business attending such growth of population, for the purpose, and with the result of increasing its annual profits from the operation of its railway systems.

That the territory contiguous and adjacent to the complainant's lines and particularly the line of railway of the East Cleveland Railroad Company, has year by year become more densely populated; that the increase in the territorial limits of said city during said period of time has not kept pace with the city's growth in population; that the increase in street railway traffic and patronage resulting from such increase in population has exceeded the relative

increase in the number of lines or extension of lines of railway made necessary by reason of such increased traffic and business and this applies particularly to the East Cleveland Railroad Company for the reason that the population of that portion of the city traversed by its lines has, within said period of time, increased in density of population in a much larger and greater proportion that it has in extent of territory, so that in order to accommodate such increased traffic and business it has not been necessary for the complainant, or its predecessors in interest, to construct nor have they constructed new lines of railway or extensions of lines in proportion to the extent of its increased traffic and business.

That during all this period the city, through its council, has been liberal in its grants to said company and its predecessors in interest, having made such grants wholly without cost or compensation, and under circumstances enabling said railway to secure the same without competing with other parties as to the rate of fare; and furthermore

69 the extensions granted to the East Cleveland Railroad Company, particularly, were granted at such times, and over such roads as to enable the said The East Cleveland Railroad Company to enjoy a virtual monopoly of the street railway business in that portion of the city of Cleveland traversed by its lines. That having thus liberally dealt with and favored the said complainant, and its predecessors in interest, and particularly the East Cleveland Railroad Company, for a period of forty years defendant says that in justice, equity and good conscience the council of the city of Cleveland on the 17th day October, 1898 exercised the right, reserved to it, to reduce the rate of fare upon that portion of complainants' lines to which the ordinance of said date applies.

And further answering defendant says, that the practical operation of putting into effect the ordinance of October 17th, 1898 will be to increase the business and patronage of the lines affected by said ordinance; that the reduced rate of fare therein provided for will be an inducement for many more persons to patronize the street cars on said lines than have heretofore patronized the same; that the additional patronage and traffic resulting thereby will more than make up the loss suffered by the complainant in the reduction of its rate of fare; and this without at the same time increasing to any material extent the expenses of operating said lines.

Defendant further answering says, that the cost of constructing, equipping, and operating electric street railways in the city of Cleveland and elsewhere, at the present time, is much less than it was at the time when electricity as a motive power for street railway operation came into general use; and much less than it was when the same was operated by complainant's predecessors in interest.

And further answering alleges that from the time the East Cleveland Railroad Company changed its system from horse power to electric motive power until the present time, there has been

70 a gradual and substantial decrease in the cost of all street railway equipments, including rails, ties, poles, wires, motors,

car-bodies and other machinery, equipment and appliances used in operating electric street railways; and with such decreased cost has also come a corresponding improvement in the durability and adaptability of such appliances and equipment.

That for these reasons electric street railways can be constructed, maintained and operated, at the present time, at a greatly reduced expense and cost as compared with consitions heretofore existing.

And further answering defendant avers, that the complainant The Cleveland Electric Railway Company is at present operating 99 miles of street railway in the city of Cleveland; that nearly all the same is a double track road and wholly operated by electricity as the motive power. That the ordinance of September 17th, 1898 hereinbefore referred to, does not affect all of complainant's lines of railway, but as stated in said ordinance it applies only to such lines of railway as are operated under and in pursuance of the renewal grant therein recited. That the lines to which it applies are what is known as the Euclid Avenue line, the Wade Park Avenue line, and the Cedar Avenue line; that the total mileage of the said lines so affected by said ordinance is 28¼ miles, leaving 71¾ miles of complainant's lines of railway to which said ordinance does not apply.

Defendant avers that neither the gross receipts, the net receipts, nor the expenses of operating any of complainant's lines of railway will be affected by the operation of said ordinance of October 17th. 1898, except that portion thereof known as the Euclid Avenue, Wade Park Avenue, and Cedar Avenue lines above referred to; and that said lines constitute only 28¼ per cent. of complainant's total or aggregate lines of railway in the city of Cleveland, leaving 71¼ per cent. of its said lines of railway wholly unaffected by said ordinance as to gross receipts, expenses and net receipts.

71

Defendant avers that the traffic and business on each of complainant's various lines of railway and the gross receipts, the expenses and the net receipts are substantially in proportion to the number of miles of each particular line of railway; that is to say; the income from, and the expense of operating each separate line is substantially the same for the same or an equal number of miles of track.

Defendant says that the alleged reduction in complainant's net receipts of — per cent. resulting from the operation of said ordinance contained in complainant's bill is not only fictitious and erroneous but is based upon the supposition that the reduction of fare provided for in said ordinance applies to each and every one of complainant's lines of railway; that is to say; it is calculated on the basis of a four cent cash fare and a 3 57/100 cent ticket fare, for all of complainant's lines of railway; whereas in truth and in fact the reduction provided for in said ordinance applies only to 28¼ per cent. of complainant's lines of railway and no more.

Therefore defendant says, that the operation and effect of said ordinance and the operation of said Euclid Avenue, Wade Park Avenue and Cedar Avenue lines at a four cent cash fare and a

3 57/100 cent ticket fare, as provided in said ordinance will enable complainant to pay all its operating expenses, fixed charges, and a fair and reasonable profit on the money actually invested in its property, and on the actual value of its property leaving a large surplus in addition thereto.

Defendant further answering says, that complainant's receipts and income from carrying passengers is not its only source of income, revenue and profit. That in addition to its income from carrying passengers said company has derived, and is deriving, an income and revenue from carrying United States mail, express matter and other packages, goods and merchandise and an
72 income and revenue from furnishing electric light, heat and power to various citizens and for various purposes, in the city of Cleveland, and from the letting of advertising space in and upon its street cars, and from certain agreements and beneficial arrangements entered into between complainant and various electric railroads operating suburban electric railways without the city of Cleveland, and from various other sources.

Defendant says that it is not informed as to the exact amount of the income and profit received by complainant from these several sources of revenue, but, it avers, that the income from such sources is not less than $150,000 per annum; and it further avers and contends that the reasonable value to complainant of exercising the privileges from which such revenue and profit are derived is not less than $150,000 per annum.

Defendant further says, that during the years which said company may in the future, under present ordinances, operate its lines of railway in said city that it is only fair to presume said city will continue to grow as it has for many years past, and that said continued growth will greatly add to the business and profits of said complainant company.

Further answering defendant denies, that before complainant could at law demonstrate the invalidity of said ordinance by adjudication, a multiplicity of suits would ensue, and great inconvenience and conflict, and trouble would arise, as alleged in paragraph thirty-one of said bill; admits that said ordinance by its terms went into effect November 1st, 1898.

Defendant further answering the matters and things contained in paragraph thirty-one, or so much thereof as it is advised is material, says, that it does not know and is not informed save by said bill, as to the matters and things therein contained, except that
73 this defendant avers that it was and is the intention of the city of Cleveland to carry into effect and enforce the provisions of the said ordinance, according to the true intent and meaning thereof, unless restrained by the order of some court of competent jurisdiction in the premises, and it therefore denies each and every allegation therein not herein admitted, and demands proof of so much thereof as it shall be advised is material.

And this defendant avers and contends that this court has no

jurisdiction of this cause, among other things for this, that the complainant has a complete and adequate remedy at law; that the subject matter of this cause does not properly come within the jurisdiction of a court of equity, and is one appropriately and properly within the jurisdiction of a court of law.

That the matter in dispute does not exceed, exclusive of interest and costs, or either, the sum of five thousand dollars, and that this cause does not arise under the laws or Constitution of the United States, and that said cause does not present, and is not a controversy between citizens of different States, but is a controversy between citizens of the same State, viz.; between the said complainant, The Cleveland Electric Railway Company, and the said defendant, The City of Cleveland, who are both citizens of the State of Ohio.

And this defendant avers, that any other matter, cause or thing in said bill contained material or necessary to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided and denied, is not true to the knowledge and belief of this defendant; and defendant denies each and every allegation not hereinbefore specifically admitted or denied; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall order
74 and direct, and this defendant denies that the complainant is entitled to the relief, or any part thereof, in said bill demanded, and prays to be hence dismissed with its costs.

MINER G. NORTON,
FORD, BOYD & CROWL,
Solicitors and Attorneys for the Defendant.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

W. H. Boyd, being first duly sworn says, that he is assistant corporation counsel of the defendant, The City of Cleveland, a municipal corporation, and that the facts and averments in the foregoing answer are true as he verily believes, and that as to that portion of the averments of said answer stated on information, that he believes the same to be true.

W. H. BOYD.

Subscribed to in my presence and sworn to before me by the said W. H. Boyd, this 10th day of December, 1898.

[SEAL.] CHAS. G. F. VON W. EMERY,
Notary Public.

Tax fees 40 cents.

75 Endorsements on answer: No. 5840. U. S. circuit court, northern district of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Answer of the City of Cleveland. Filed Dec. 10, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, att'ys for defendant.

76 In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant, vs. THE CITY OF CLEVELAND, Defendant. } No. 5840. Affidavit of William G. Beck.

William G. Beck, being first duly sworn, deposes and says: That he is a member of the annual city board of equalization of the city of Cleveland and is secretary of said board, having served in such capacity since the twelfth day of July, 1898; that in addition thereto he has been continuously employed as a clerk in the office of the county auditor of Cuyahoga county, Ohio, for seven years last past; that in his said two official capacities he has become thoroughly familiar with the records of the office of the county auditor of Cuyahoga county, as well as the records kept by said board of equalization, and particularly familiar with that part of the records of said offices pertaining to the returns made by persons and corporations in said city and county of the amounts and value of their personal property. Affiant says that the exhibits hereto attached and marked respectively "Exhibits "A" to "Exhibit "Z" inclusive, and Exhibits "A–1" to Exhibit "A–11" inclusive, are true and accurate copies of the affidavits and statements made by the officers by which they each severally purport to have been made, of the Brooklyn Street Railroad Company, the Broadway & Newburgh Street Railroad Company, the South Side Street Rail-
77 road Company, the East Cleveland Railroad Company, and the Cleveland Electric Railway Company, for the years from 1887 to 1898, inclusive,; and that said exhibits are true copies of all the affidavits, showing the amounts, nature and value of the personal property of said companies which are on file with the auditor of said county; that he has compared each one of the said exhibits with the original on file in said office and knows the same, and each one of the same to be a correct and accurate copy of the original affidavits.

Affiant further says that the last return of personal property made by the Brooklyn Street Railroad Company, the Broadway & Newburgh Street Railroad Company, the South Side Street Railroad Company, and the East Cleveland Railroad Company, were for the year 1892; that the first return of personal property made by the Cleveland Electric Railway Company was for the year 1893, and that the return made by said company has been continued annually from 1893 until 1898, inclusive.

Affiant says that the companies which were consolidated in 1893, and formed the Cleveland Electric Railway Company were the Brooklyn Street Railroad Company, the Broadway & Newburgh Street Railroad Company, the South Side Street Railroad Company, and the East Cleveland Railroad Company; that the total and aggregate value of the personal property in the city of Cleveland, in-

cluding tracks, equipment, rolling stock, money in bank, and credits of the said four companies as shown by their affidavits on file in the office of the said county auditor for the years 1887, 1888, 1889, 1890, 1891 and 1892, is as follows:

For the year 1887	$211,235
For the year 1888	229,200
For the year 1889	265,390
For the year 1890	374,025
For the year 1891	399,865
For the year 1892	230,585

In the year 1892 the East Cleveland Railroad Company
78 made no return of personal property in the city by affidavit.

Affiant further says that the total aggregate value of all the personal property of the Cleveland Electric Railway Company in the city of Cleveland, including tracks, equipment, rolling stock, money in bank, and credits, as shown by the affidavits on file in the office of said county auditor for the years 1893, 1894, 1895, 1896, 1897, and 1898, is as follows:

For the year 1893	$566,148
For the year 1894	560,767
For the year 1895	751,135
For the year 1896	798,910
For the year 1897	834,955
For the year 1898	583,587

Affiant further says that reference to the exhibits hereto attached will show that for the years 1895, 1896, and 1897, the Cleveland Electric Railway Company in the affidavit made by the officer making the same did not put a valuation on their tracks, said valuation having been left blank in the affidavit made by said company, and such valuation having been thereafter fixed by the said board of equalization.

Affiant further says that the exhibits hereto attached and marked "Exhibit A–12" is a correct and accurate statement of the tax valuation of all the property, both real and personal, of said The Cleveland Electric Railway Company, situated both in the city of Cleveland and outside of the city within the county of Cuyahoga, as shown by the records of the office of the county auditor of Cuyahoga county, and of the boards of equalization of the said city and county; that said detailed statement was prepared by affiant from said records, was carefully compared by him with said records; and that the same is correct.

WILLIAM G. BECK.

Sworn to before me by the said William G. Beck, and by him subscribed in my presence, this 16th day of December, 1898.

CHAS. G. F. VON W. EMERY,
Notary Public.

[SEAL.]

Tax fees forty cents.

100 EXHIBIT "V."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Cleveland Electric Railway Company owned by said company on the day preceding the second Monday in April, 1893, in Cuyahoga county, Ohio, Brooklyn village.

101 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
	.....	37	.....	.....	.....	4603.01	1702.00
	Poles &	wires.	.....	.....	.....	2760.00	1021.20
		37					
Grand total.....	.....	.....	.....	.....	.....	.....	2723.20

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, L. E. Beilstein ass't sec'y of the Cleveland Electric Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland Electric Railroad Company on the date preceding the second Monday in April, 189–.

L. E. BEILSTEIN, *Ass't Sec'y.*

Sworn to before me and subscribed in my presence this 23 day of Aug. 1893.

GEO. C. AINGER,
[SEAL.] *Notary Public.*

102 Endorsement: Bk. VIII. Report of taxable property of the Cleveland Electric Street Railway Company. For 1893. Cuyahoga county. *Ent.* Received at the auditor's office Aug. 23 1892.

103 EXHIBIT "W."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Broadway & Newburgh St. R. R. *Railroad* Company owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio—Cleveland.

SCHEDULE A.

	No.	Value of each.	Total value.
Trail or horse cars 1st class open	7	200	1400
" " " 2nd " "	9	180	1620
" " " 3rd " "	10	75	750
Wagons			100
Horses	10	50	500
Harnesses			50

SCHEDULE B.

Office furniture, fixtures, safes, &c	75

104 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
	9 miles	12 poles &	wires			4600	4495
						1400	55200
							12600
Grand total							72295

THE STATE OF OHIO, *Cuyahoga County,* } ss:

—, The Broadway and Newburgh St. Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property exclusive of real estate, owned by the Broadway and Newburgh St. Railroad Company on the day preceding the second Monday in April, 1892.

EDWIN FOWLER, *Sec'y.*

Sworn to before me and subscribed in my presence this — day of ——, 189–.

——, ——.

105 Endorsement: Report of taxable property of the Broadway and Newburgh Street Railway Company. For 1892. Cuyahoga county. Received at the auditor's office ——, 189–.

106 EXHIBIT "X."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the East Cleveland R. R. Co. *Railroad Company* owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class, cars	20	360	7200
Motor car equipments	20	500	10000
Trail or horse cars 1st class open cars	20	240	4800
" " " 2nd " box "	16	300	4800
Snow plows	3	.....	250
Wagons	6	.....	250
Horses	40	30	1200

SCHEDULE B.

Value of all iron and wooden ties and stringers on hand not laid	100
Amount of money in hand on day preceding 2d Monday in April, 1892	500
	29100

107 SCHEDULE C.

City.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
36 miles of track	.....	.....	.....	.....	.....	2300	29100 82800
28 " " poles & wires	.....	.....	.....	.....	.....	1380	38640
Grand total	.....	.....	.....	.....	.....	.....	$150540

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, L. E. Beilstein of the East Cleveland Railroad Company, do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the East Cleveland Railroad Company on the day preceding the second Monday in April, 189–.

L. E. BEILSTEIN,
Ass't Sec. & Treas.

Sworn to before me and subscribed in my presence this 19 day of July, 1892.

GEO. C. AINGER,
[SEAL.] *Notary Public.*

108 Endorsement: Report of taxable property of the East Clev'd R. R. Co. *Street Railway Company* for 1892. Cuyahoga county. Received at the auditor's office, July 20, 1892.

109 EXHIBIT "*V.*"

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the South Side Street Railroad Company owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 3rd class	5	$400	$2000
			$2000

110 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
Double track		4				4800	$2000
Single "						2300	18400
Poles & wires		6.46				2760	92
" "			4			1380	17829.60
							55.20
Grand total							38376.80

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, H. J. Davis, secretary of the South Side Street Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, in Cleveland exclusive of real estate, owned by the South Side Street Railroad Company on the day preceding the second Monday in April, 1892.

H. J. DAVIS.

Sworn to before me and subscribed in my presence this 8th day of August, 1892.

GEO. C. AINGER,
Notary Public.

[SEAL.]

111 Endorsements: Report of taxable property of the South Side Street Railway Company. For 1892. Cuyahoga county. Received at the auditor's office ——, 189–.

112 EXHIBIT "Z."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the Broadway and Newburgh St. R. R. Co. *Railroad Company* owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio—Newburgh township.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	10	800	8000
" " 2nd "	25	650	16250
Trail or horse cars 1st class	12	225	2700
" " " 2nd class	10	175	1750
Sweepers	2		1000

SCHEDULE B.

Tools and implements	200
Value of supplies of all kinds on hand and not in above items	100
	30000
Grand total	30000

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, The Broadway and Newburgh St. Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable

property, exclusive of real estate, owned by the Broadway and Newburgh St. Railroad Company on the day preceding the second Monday in April, 1892.

EDWIN FOWLER, *Sec'y.*

Sworn to before me and subscribed in my presence this — day of ——, 189–.

—— ——.

113 Endorsement: Report of taxable property of the Broadway and Newburgh Street Railway Company. For 1892. Cuyahoga county. Received at the auditor's office ——, 189–.

114 EXHIBIT "A 1."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the South Side Street Railroad Company owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio—Brooklyn Tp.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	13	$900	$11700
Trail or horse cars 1st class	21	300	6300
			$18000

115 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
							18000
Track		32				4600	1472
Poles & wires		32				2760	883
Grand total							$19998

THE STATE OF OHIO, *Cuyahoga County,* } *ss:*

—, H. J. Davies, secretary of the South Side Street Railroad Co., do solemnly swear that the foregoing is a full and complete statement

of all taxable property, in Brooklyn township exclusive of real estate, owned by the South Side Street Railroad Company on the day preceding the second Monday in April, 1892.

H. J. DAVIES.

Sworn to before me and subscribed in my presence this 8th day of August 1892.

GEO. C. AINGER,
Notary Public.

[SEAL.]

116 Endorsements: Br. Tp. report of taxable property of the South Side Street Railway Company for 189–. Cuyahoga county. Received at the auditor's office —— 189–.

117 EXHIBIT "A 2."

(*Street Railway Companies' Return for Taxation.*)

The statement of alll taxable property of the East Cleveland R. R. Co. *Railroad Company* owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio—East Cleveland township.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class, cars	71	360	25560
" " motor car equipments	71	500	35500
Trail or horse cars 1st class, box	23	300	6900
" " 1st " open	30	240	7200
" " 2nd " "	20	200	4000
Sprinklers			200
Wagons, park wagons			400
Horses	2	50	100
Grand total			79860

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, L. E. Beilstein, of the East Cleveland Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property exclusive of real estate, owned by the East Cleveland Railroad Company on the day preceding the second Monday in April, 1892.

L. E. BEILSTEIN,
Ass't Sec. & Treas.

Sworn to before me and subscribed in my presence this 19 day of July 1892.

GEO. C. AINGER,
Notary Public.

[SEAL.]

118 Endorsements: Report of taxable property of the East Cleveland Street Railway Company. For 189–. Township of East Cleveland. Received at the auditor's office, July 18th 1892.

119 EXHIBIT "A 3."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Brooklyn Street Railroad Company, owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio—Cleveland.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	51	$900	$45900
" " 3rd "	2	400	800
Trail or horse cars 1st class	66	300	19800
" " 2nd "	4	200	800
Snow plows	4	150	600
Sweepers	1	50	50
Sprinklers	1	50	50
Wagons	9		300
Horses	18	50	900
Harnesses	7	15	105

SCHEDULE B.

Tools and implements	100
Office furniture, fixtures, safes, &c	1000
Lumber, stone, wood and coal on hand	500
Value of all hay and grain on hand	500
Value of all iron and wooden poles on hand and not set	125
Value of all copper and iron wire and cable on hand not in use	500
Value of supplies of all kinds on hand and not in above items	2000
	$74030

120 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, etc., cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
							$74030
Track		8.33				4600	38318
Poles & wires		9.46				2760	26109.60
Grand total							$138457.60

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, H. J. Davies, secretary of the Brooklyn Street Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Brooklyn Street Railroad Company on the day preceding the second Monday in April, 1892.

H. J. DAVIES.

Sworn to before me and subscribed in my presence this 8th day of August 1892.

GEO. C. AINGER,
Notary Public.

[SEAL.]

121 Endorsements: Report of the taxable property of the Brooklyn Street Railway Company. For 1892. Cuyahoga county. Received at the auditor's office, ——, 189–.

122 EXHIBIT "A 4."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Brooklyn Street Railroad Company owned by said company on the day preceding the second Monday in April, 1892, in Cuyahoga county, Ohio—Brooklyn Tp.

123 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
Double track		32				4600	1472
Poles & wires		32				2760	883.20
Grand total							2355

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, H. J. Davies secretary of the Brooklyn Street Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, in Brooklyn township exclusive of real

estate, owned by the Brooklyn Street Railroad Company on the day preceding the second Monday in April, 189–.

H. J. DAVIES.

Sworn to before me and subscribed in my presence this 8th day of August 1892.

GEO. C. AINGER,
Notary Public.

[SEAL.]

124 Endorsements: Report of taxable property of the Brooklyn Street Railway Company. For 1892. Cuyahoga county. Received at the auditor's office —— 189–.

125 EXHIBIT "A 5."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the Cleveland Electric Railway Company owned by said company on the day preceding the second Monday in April, 189–, in Cuyahoga county, Ohio—Cleveland.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	130	900	117000
" " 3rd "	80	500	40000
Trail or horse cars 1st class	87	300	26100
" " 2nd "	155	250	38750
" " 3rd "	10	50	500
Snow plows	4		600
	1		50
	3		450
Sweepers	2		100
	2		1000
	1		100
Sprinklers	3		150
Wagons			1000
Horses	60	50	3000
Harnesses			255

SCHEDULE B.

Machinery (not included that listed with real estate)	2500
Tools and implements	
Lumber, stone, wood and coal on hand	1075
	232630

126 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
				39 04		2300.00	89792.00
						4600.00	116794.00
Poles and wires		81 98				1380.00	126932.40
Grand total							333518.40
						Total	566148.

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

—, L. E. Beilstein, ass't sec'y of the Cleveland Electric Railroad Co, do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland Electric Railroad Company on the day preceding the second Monday in April, 189–.

L. E. BEILSTEIN, *Ass't Sec'y.*

Sworn to before me and subscribed in my presence this 23 day of Aug. 1893.

GEO. C. AINGER,
Notary Public.

[SEAL.]

127 Endorsements: Report of taxable property of the Cleveland Electric Street Railway Company For 1893. Cuyahoga county. Received at the auditor's office, Aug. 23 1893.

128 EXHIBIT "A 6."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Cleveland Electric Ry. Co. *Railroad Company* owned by said company on the day preceding the second Monday in April, 189-, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	130	900	117000
" " 3rd "	70	500	35000
Trail or horse cars 1st class	87	300	26100
" " 2nd "	153	250	38250
" " 3rd "	9	50	450
Snow plows	4	150	600
	1	50	50
	3	150	450
Sweepers	1	100	100
	2	50	100
	2	500	1000
Sprinklers	1	50	50
	2	100	200
Horses	25	50	1250

SCHEDULE B.

Machinery (not included that listed with real estate)	2000
Office furniture, fixtures, safes, &c.	1075

129 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
City			90 19			2300	207437
Brooklyn			74			"	1702
City			Poles and	wires.		1380	126932
Brooklyn V			91 96			"	1021
			74				
Grand total							560767

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, L. E. Beilstein of the Cleveland Electric Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland Electric Railroad Company on the day preceding the second Monday in April, 189–.

L. E. BEILSTEIN, *Ass't Sec.*

Sworn to before me and subscribed in my presence this 24 day of Aug. 1894.

C. C. SHELLENTRAGER, *Co. Aud.*

130 Endorsements: Report of taxable property of the Cleveland Electric Street Railway Company. For 1894 Cuyahoga county. Received at the auditor's office Aug. 24 1894. C. C. Shellentrager Co. auditor.

131 EXHIBIT "A 7."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the Cleveland Electric Railroad Company owned by said company on the day preceding the second Monday in April, 1895, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	229	900	206100
Trail or horse cars 1st class	87	300	26100
" " 2nd "	156	250	39000
" " 3rd "	9	50	450
Snow plows	7	150	1050
	1	50	50
Sweepers	1	100	100
	2	50	100
	2	500	1000
	1	.....	400
Sprinklers	1	300	300
Horses	25	50	1250

SCHEDULE B.

Machinery (not included that listed with real estate)	4300
Office furniture, fixtures, safes, &c.	1075
Lumber, stone, wood and coal on hand	1000
Value of supplies of all kinds on hand and not in above items	2200
Amount of money in hand on day preceding 2d Monday in April, 1895	5000

132 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, strings, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
1895.							
Cleveland		47 68	6 72			6000	286080
"			& wires.			3000	20160
		Poles 51 74				3000	155229
Grand total							731135

Not sworn to.

Endorsements: Report of taxable property of the Cleveland Electric Street Railway Company. For 1895. Cuyahoga county. Received at the auditor's office ——, 189–.

133 EXHIBIT "A 8."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Cleveland Electric Railroad Company owned by said company on the day preceding the second Monday in April, 1896, in Cuyahoga county, Ohio.

SCHEDULE A.

		No.	Value of each.	Total value.
Electric motors 1st class		126	900	113400
" " 2nd "		131	900	117900
" " 3rd "		8	900	7200
Trail or horse cars 1st class		157	300	47100
" " 2nd "		74	200	14800
Construction motor cars		43	100	4300
Freight cars		3	500	1500
		6	50	300
Snow plows		3	150	450
Sweepers	1–100–100 2–50–100 1–400–400 5–500–2500 } 3100	9		3100
Sprinklers	2–100–200 3–300–900 } 1100	5		1100
Wagons		7	25	175
Horses		17	40	680
Harnesses		20		50

SCHEDULE B.

Machinery (not included that listed with real estate)	2500
Tools and implements	
Office furniture, fixtures, safes, &c	1075
Lumber, stone, wood and coal on hand	1000
Value of supplies of all kinds on hand and not in above items	2200
Amount of money in hand on day preceding 2d Monday in April, 1896	5000
	323830

134 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track horse railroad.	No. of miles of single track horse railroad.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
Forward		49 90				6000	323830
			2 76			3000	299400
Poles and wires							8280
Cleveland city		53 96				3000	161880
" "			2 76			2000	5520
Grand total							798910

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

I, R. N. Harman secretary of the Cleveland Electric Railroad Co. do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland Electric Railroad Company on the day preceding the second Monday in April, 189–.

R. N. HARMAN.

Sworn to before me and subscribed in my presence this 26 day of Oct., 1896.

W. J. MEAD,
Notary Public.

[SEAL.]

135 Endorsements: 1896. Report of taxable property of the Cleveland Electric Street Railway Company. For 1896. Cuyahoga county. Received at the auditor's office ——, 189–.

136 EXHIBIT "A 9."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the Cleveland Electric Ry. Co. *Railroad Company* owned by said company on the day preceding the second Monday in April, 1897, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	145	900	130500
" " 2nd "	82	900	73800
" " 3rd "	106	900	95400
Trail or horse cars 1st class	9	300	2700
" " 2nd "	192	200	38400
" " 3rd "	8	100	800
Construction motors	3	500	1500
Freight cars	6	50	300
Snow plows	3	150	450
Sweepers	5	500	2500
Sprinklers	6	300	1800
Wagons	7	25	175
Horses	17	25	425
Harnesses	20		50

SCHEDULE B.

Machinery (not included that listed with real estate)	2500
Tools and implements	
Office furniture, fixtures, safes, &c	1075
Lumber, stone, wood and coal on hand	500
Value of all hay and grain on hand	None.
Value of all iron and steel rails on hand and not laid	None.
Value of all iron and wooden ties and stringers on hand not laid	500
Value of supplies of all kinds on hand and not in above items	1500
Amount of money deposit in banks on day preceding 2nd Monday in April, 1897	5000
Amount of money in hand on day preceding 2d Monday in April, 1897	
Value of all credits and amounts due to company, $—	Debts exceed credits.
Deduct all amounts owing by company from last item, $—	
Total credits less debts, $—	
	359875

137 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track. Poles, wires.	No. of miles of single track. Poles, W.	Value of track per mile, including all rails, ties, stringers, cable, poles, wire, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
							359875
		47 36		47 36		6000	284160
						3000	142080
			2 30		2 30	3000	6900
						2000	4600
		2 54				6000	15240
				6 60		3000	19800
			46/100			3000	1380
					46/100		920
Grand total							$834957

Endorsement: Report of taxable property of the Cleveland Electric Street Railway Company. For 1897. Cuyahoga county. Received at the auditor's office —— 189–.

138

EXHIBIT "A 10."

(*Street Railroad Companies' Return for Taxation.*)

The statement of all taxable property of the Cleveland Electric Railroad Company owned by said company on the day preceding the second Monday in April, 1898, in Cuyahoga county, Ohio.

SCHEDULE A.

	No.	Value of each.	Total value.
Electric motors 1st class	152	900	136800
" " 2nd "	87	700	60900
" " 3rd "	109	500	54500
Trail cars 1st class	None.		
" " 2nd "	None.		
" " 3rd "	174	50	8700
Construction motors	3	500	1500
Freight cars	6	50	300
Snow plows	None.		
Sweepers	3	500	1500
Sprinklers	3	100	300
Wagons	7	200	1400
Buggies	7	25	175
Horses	None.		
Mules	16	25	400
Harnesses	None.		
All other personal property included in rolling stock and not included in any above items	20		50
	None.		

SCHEDULE B.

Machinery (not included that listed with real estate)	3000
Tools and implements	
Office furniture, fixtures, safes, &c	1000
Lumber, stone, wood and coal on hand	500
Value of all hay and grain on hand	*None.*
Value of all iron and steel rails on hand and not laid	None.
Value of all iron and wooden poles on hand and not set	None.
Value of all iron and wooden ties and stringers on hand not laid	None.
Value of all copper and iron wire and cable on hand not in use	None.
Value of supplies of all kinds on hand and not in above items	None.
Amount of money deposit in banks on day preceding 2d Monday in April, 1898	2000
Amount of money in hand on day preceding 2d Monday in April, 1898	5000
Value of all credits and amounts due to company, $—	
Deduct all amounts owing by company from last item, $—	Debts exceed credits.
Total credits less debts	
Forward	278025

139 SCHEDULE C.

City, village, hamlet, township and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track, poles & wires.	No. of miles of single track, poles & wires.	Value of track per mile, including all rails, ties, fastenings, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
Forward.....	.....	.....	.....	.....	.....	.....	278025
	.....	48 06	.....	.....	.....	.....	221076
	.....	.....	.....	48 06	.....	.....	76896
	.....	.....	2 30	.....	.....	.....	5290
	.....	.....	.....	.....	2 30	.....	2300
Grand total.....	.....	.....	.....	.....	.....	.....	583587

THE STATE OF OHIO, } ss:
Cuyahoga County, }

—, H. J. Davies, ass't sec. of the Cleveland Electric Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland Electric Railroad Company on the day preceding the second Monday in April, 1898.

H. J. DAVIES.

Sworn to before me and subscribed in my presence this 1 day of Aug. 1898.

A. E. AKINS,
Co. Auditor.

140 Endorsements: Copy. Report of taxable property of the Cleveland Electric Street Railway Company. For 1898 Cuyahoga county. Received at the auditor's office —— 189–.

141 EXHIBIT "A 11."

(Street Railroad Companies' Return for Taxation.)

The statement of all taxable property of the — — Railroad Company owned by said company on the day preceding the second Monday in April, 189-, in Cuyahoga county, Ohio.

142 SCHEDULE C.

City, village, hamlet, township, and special school district.	No. of miles of double track cable railroad.	No. of miles of double track electric railroad.	No. of miles of single track electric railroad.	No. of miles of double track, poles & wires.	No. of miles of single track, poles & W.	Value of track per mile, including all rails, ties, stringers, cable, poles, wires, conduits, switches, turnouts, etc.	
	Miles 100ths.	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Miles 100ths.*	*Dollars.*	
East Cleveland village		2 65				4600	12190
" " "				2 65		1600	4240
East Cleveland tp		34				4600	1564
" " "				34		1600	544
" " "			1 55			2300	3565
Newburg tp		12			1 55	1000	1550
" "						4600	552
" "						1600	192
" "			1 21			2300	2783
Brooklyn tp			28		1 21	1000	1210
" "						2300	644
South Brooklyn village		70			28	1000	280
" " "				70		4600	3220
						1600	1120
Grand total							30654

THE STATE OF OHIO, *Cuyahoga County,* } *ss:*

—, H. J. Davies, ass't sec. of the Cleveland Electric Railroad Co., do solemnly swear that the foregoing is a full and complete statement of all taxable property, exclusive of real estate, owned by the Cleveland Electric Railroad Company on the day preceding the second Monday in April, 1898.

H. J. DAVIES.

Sworn to before me and subscribed in my presence this 1 day of Aug. 1898.

A. E. AKINS,
Co. Auditor.

Endorsements: 1898—Report of taxable property of the Cleveland Electric Street Railway Company. For 1898. Cuyahoga county. Received at the auditor's office Aug. 1 1898.

143	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Brooklyn St. R. R. Co.:												
Real estate	18660	32940	27540	34840	54600	57030	57030					
Personal return (city)	70680	78215	85475	126020	129920	119915						
" " (county)	5175	3450	1725	2760	14760	2355						
Real estate (Brk. Ville)						3240						
Broadway and Newburgh:												
Real estate (city)	21385	21385	21385	21385	29720	28680						
Personal (city)	33860	42425	54475	70210	73395	72295						
Real estate (Newburgh tp.)				100	10180	10180						
Personal (county)						30000						
South Side St. R. R. Co.:												
Real estate (city)	3420	None	None	5000	14350	16500						
Personal (city)	7895	7900	16815	33985	35880	38375						
Real estate (Brk. Ville)			3135	14760	14760	19995						
" " (county)			1725	3135	3240	3240						
East Cleveland St. Ry. Co.:												
Real estate city	45920	46020	55520	56155	72270	129500						
Real estate county	6430	6430	18430	18660	13840	None						
Personal city	98800	100660	108625	143810	161370	150540						
Personal county	9500	16280	16390	45900	50050	79860						
Cleveland Electric Ry. Co.:												
Real estate (city)								295730	295830	306120	237540	237540
Personal (city)							566148	560767	751135	798910	834955	583587
Real estate (county)								13420	14160	16290	16290	16290
Personal (county)							2725		42300		32920	33660

23262

144 Endorsements on affidavit of Wm. G. Beck: No. 5840. The Cleveland Electric Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of Wm. G. Beck. Filed Dec. 17, 1898 Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd and Crowl, attorneys for the City of Cleveland.

145 *Affidavit of Alfred Strehler.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5840. Affidavit of Alfred Strehler.

Alfred Strehler being first duly sworn, deposes and says: That he is a civil engineer by profession and occupation, having been actively engaged in civil engineering for the past twenty-seven years, and that for the past eleven years he has been continuously
146 employed in the engineering department of the city of Cleveland, having special charge of the location, plats, surveys and measurements of the streets, avenues, alleys and public grounds of said city, and that beginning with the fifth day of November, 1898, and ending with the tenth day of December, 1898, he made measurements and computations of the aggregate lineal measurement- of all the lines of street railway within the limits of the city of Cleveland owned and operated by The Cleveland Electric Railway Company, complainant herein.

Affiant further says that the Cleveland Electric Railway Company owns and operates at the present time about 99.4 miles of street railway in the city of Cleveland (single track measurement); that substantially all of the same is operated as double track railway; that the aggregate lineal measurement of that portion of said company's lines to which the ordinance of October 17th 1898, applies, viz: the Euclid Avenue, Cedar Avenue, and Wade Park Avenue lines, is 28 3/10 miles, leaving 71 1/10 miles of said company's lines of railway to which said ordinance does not apply; in other words, the total aggregate mileage of the Euclid Avenue, Cedar Avenue and Wade Park Avenue lines constitutes about 28½ per cent. of the Cleveland Electric Company's total or aggregate lines of railway in the city of Cleveland.

Affiant further says that he has attached to this, his affidavit, a schedule marked "Exhibit A," showing the various lines of railway operated by the Cleveland Electric Railway Company, the length of each in feet and miles stated separately, together with the distances

between certain points thereon shown on certain streets where more than one line of railway is operated over one and the same track, and which schedule affiant says is correct to the best of his knowledge and belief.

ALFRED STREHLER.

Sworn to by the said Alfred Strehler before me and by him
147 subscribed in my presence, this 14th day of December, 1898.

CHAS. G. F. VON W. EMERY,
[SEAL.] *Notary Public.*

Tax fee forty cents.

"EXHIBIT A."

Cleveland Electric Railway Company.

Track Mileage.

Line.	From—	To—		Feet single track.	Miles single track.
Euclid avenue	C. Water and C. Superior.	Easterly city limits	62308		
Stearns St. cross-over	Euclid	Cedar	4498		
				66806	12.653
Cedar avenue	C. Perry and C. Prospect	Easterly city limits		40544	7.678
Central avenue	C. Ontario and C. Prospect	E'ly end of line (90' E. of Bertram)		36162	6.848
Scovill avenue	C. Ontario and C. Central	Woodland Hills Ave		40397	7.651
Wade Park avenue	C. Euclid and Case	C. Euclid and C. Amndale		41910	7.937
Broadway	N. line of Factory and C. of Ontario.	E'ly city limits at Miles Ave	58746		
	C. Miles and C. Broadway out Broadway.	Easterly city limits	6300		
				65046	12.319
Union St. Belt line	C. Broadway and C. Union	C. Broadway and C. Hamm	60134		
Independence St	Sykora	Petrie	3428		
"	Hugo, Beyerle and Sykora		1231		
Union St. Belt line	C. Broadway and C. Orange	C. Humboldt and C. Pittsburg	10050		
				74843	14.175
Mayfield R'd branch	C. Euclid	Along Coltmann to Mayfield	1711		
	C. Coltman and Mayfield	E'ly city limits	848		
				2559	.485
Pearl street	C. Lorain and C. Pearl	Southerly city limits		27796	5.264
Clark avenue	C. Jennings and Clark	C. C. C. & St. L. R. R.		20312	3.847
Scranton avenue	S. line of Superior	C. Clark and Scranton		21398	4.052
Jennings avenue	C. of Ontario and Central	N. line of Holmdon		20312	3.847
Burton St. branch	C. Clark and Burton	C. Dennison		12640	2.393
Fairfield St. branch	C. Jennings and Fairfield	C. Starkweather		6620	1.254
Abbey St. branch	E. Line of Pearl	C. Jennings		6494	1.229

Willson avenue	C. Broadway and Willson	1950′ N. of C. of St. Clair		44070		
	Less cable, Payne to Lexington		1216			
	Less Scovill, Scovill to Quincy		1164			
	Less Wade Park line, Perkins to Hough		804			
				3184		
					40886	7.744
					524725	99.379
Total mileage of single track of the Cleveland Electric Railway Company, excepting down-town loops						99.379

11—256

Distances Along Streets Occupied by More Than One Line.

From center of Superior and Seneca down Seneca to C. Lake (single track)	1447	
From center of Seneca and Lake out Lake to C. Ontario (single track)	581	
From center of Lake and Ontario up Ontario to C. of St. Clair (single track)	716	
From center of St. Clair and Ontario up Ontario to C. public sq. (double track)	732	
		4208
From center of Superior St. and C. of street W. in square (F. C. houseloop) 555′ double track		1110

149

"EXHIBIT A."

Cleveland Electric Railway Company.

Track Mileage—Continued.

	Feet Single Track.
From center of Superior and C. of St. east in square (Cuyahoga Block loop) (single track)	561
From center of Superior and Bank, down Bank to Lake (single track)	1446
From center of Bank and Lake, along Lake to Water, (single track)	582
From center of Superior and Ontario, up Ontario to C. of Prospect (one track)	747
From E. line of public square at Euclid to C. of Perry and Prospect (one track)	5174

December 10th, 1898,
ALFRED STREHLER,
Ass't Engineer.

232268

150 Endorsements on affidavit of Alfred Strehler: No. 5840. U. S. circuit court, northern district of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Affidavit of Alfred Strehler. Filed Dec. 17, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd and Crowl, attorneys for defendant.

151 *Order Continuing Order to Show Cause.*

October Term, A. D. 1898, to-wit, December 17, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO. *vs.* THE CITY OF CLEVELAND. } No. 5840. Equity.

The hearing on the return of the rule to show cause why a temporary injunction should not issue as prayed for in the bill of complaint is postponed to Thursday, December 22nd, 1898, at 10 o'clock a. m., or as soon thereafter as counsel can be heard. And the injunction heretofore granted is continued in full force and effect as hereinbefore ordered.

Affidavit of John W. Taylor.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5840. Affidavit of John W. Taylor.

John W. Taylor being first duly sworn deposes and says: That he is a broker and dealer in real estate in and about the city of Cleveland, Ohio; that he has been engaged in such business in said city for the period of 14 years; that he is familiar with real estate values in, throughout and about said city, and that between the 17th day of December, 1898, and the 22nd day of December, 1898, in company with one Wm. G. Taylor and one Chas E. Pegler, he made a complete and thorough examination and view of the real estate of the Cleveland Electric Railway Company located in the city of
152 Cleveland, for the purpose of ascertaining and estimating the fair and reasonable value thereof; that the number of pieces and parcels of real estate so examined and estimated by him are fully described in the affidavit of Arthur Odell, filed in this case,

to which reference is hereby made for a more specific description thereof.

Affiant further says, that in his opinion the fair and reasonable value of the real estate of the Cleveland Electric Railway Company in the city of Cleveland, as shown and described in the said affidavit filed by the said Arthur Odell and including all of the real estate therein described from parcel No. 1 to No. 30, inclusive, is $223,769.00. Affiant says that said valuation does not include the value of any improvements or buildings on any of said real estate.

JOHN W. TAYLOR.

Sworn to by the said John W. Taylor and by him subscribed in my presence, this 22nd day of December, 1898.

[SEAL.] OSCAR J. HORN,
Notary Public.

Tax fees 40c.

Endorsements on affidavit of John W. Taylor: 5840. United States circuit court. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Affidavit 153 of John W. Taylor on behalf of defendant. Filed Dec. 22, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, att'ys for defendant.

Affidavit of Arthur Odell.

Descriptions of All Real Estate Owned by the Cleveland Electric Railway Co. to Dec. 5, 1898.

Tax duplicate of 1898 used as basis of—34 parcels—ownership with the deed indexes since Feb. 1, 1898.

Parcel number 1.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as part of original ten acre lot No. 99 in said city, and bounded as follows:—Beginning on the northerly line of Euclid avenue and 10 feet westerly from the southeasterly corner of land conveyed to Azariah Everett by Rebecca Parker and husband by deed in volume 169, page 176; thence southerly and parallel with the easterly line of land so deeded to the line of the Cleveland & Pittsburgh railroad; thence southeasterly along the line of said railroad to the easterly line of land so conveyed to Everett; thence along said line to Euclid avenue; thence westerly along the line of said avenue 10 feet, to the place of beginning.

Parcel number 2.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as part of ten acre lot No. 99 in said city, and

bounded as follows:—Beginning upon the northerly line of
154 Euclid avenue, at a point 80 feet westerly from the westerly line of Willson avenue, and at the southwesterly corner of land in said lot No. 99, deeded by the East Cleveland Railroad Company to Willard and Pearson by deed in volume 206, page 26, Cuyahoga county records; thence northerly along the westerly line of land so deeded to the line of the Cleveland & Pittsburgh railroad; thence northwesterly along the line of said land to the westerly line of land of the estate of John O. Willard formerly; thence southerly along the line of said estate to the line of Euclid avenue; thence easterly along the line of said avenue 106½ feet to the place of beginning.

Parcel number 3.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as all of sub-lots 100, 101, 102, 103, 104, 105, and 36 feet off the westerly side of sub-lot 106 in Southern and Chamberlain's sub-division of 100 acre lots 334 and 335 in said city. Also the reserve strip, 10 feet in width, in the rear of said sub-lots 102, 103, 104 and 105.

Also the "reserved strip" 10 feet in width in the rear of sub-lots 106 and 107 of said sub-division.

The plat of said sub-division is recorded in volume 11 of Maps, pages 42 and 43, in the office of the recorder of said county.

Parcel number 4.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as all of sub-lots 16, 17, 18, 19, 20, 21, 22 and 23 of Margaret W. and Wm. V. Craw's sub-division of 10 acre lots 48, 49 and 50, as the same is recorded in volume 3 of Maps, page 60 in the office of the recorder of said county.

155 Parcel number 5.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as being the whole of sub-lot No. 57 and 5 feet off the north side of sub-lot No. 56 in L. W. Sapp's sub-division of a part of original lots Nos. 341 and 344 in said city. Said sub-lot No. 57 has a frontage of 25 feet on the west side of Dunham avenue, and is 139 9/12 feet deep, according to the plat of said sub-division in volume 3 of Maps, page 43, in the office of the recorder of said county.

Parcel number 6.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as the south 20 feet of sub-lot No. 53 and the whole of sub-lot No. 54 and the north 5 feet in width of sub-lot No. 55 all in L. W. Sapp's sub-division of a part of original lots 341 and 344 in said city.

Being in all 50 feet front on Norwood street, according to the plat of said sub-division in volume 3 of Maps, page 43 in the office of the recorder of said county.

Parcel number 7.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as sub-lots number- 1, 2, 3, 7, 8, 9, 10, 11, 12 and 13 in Smith and Gilbert's sub-division of sub-lots 13, 14, 15 and 16 in Sheldon and Corlett's allotment of part of original 100 acre lot No. 408 in said city, according to the plat of said sub-division, recorded in volume 4 of Maps, page 54, in the office of the recorder of said county.

Parcel number 8.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as being part of original lot No. 318, formerly in the township of Newburgh, and bounded as follows:—North
156 by the south line of the Connotton Valley Railway Company, and having on said south line 135½ feet front; east by land owned by A. W. Morgan and extending 373 feet and 9½ inches to the north line of Broadway; south by said north line of Broadway, and having 148 feet and 3½ inches front on said Broadway; west by land owned by Antoinette Du Bois, and extending from said Broadway 321 feet and 7 inches to said south line of Connotton Valley Railway Company.

Parcel number 9.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as being sub-lot No. 58 in Abel Mead's sub-division of part of original lot No. 324 in Newburgh township, and that part of sub-lot No. 68 in said allotment described as follows: Beginning at the northerly corner of said sub-lot No. 68; thence southeasterly along the northeast line of said sub-lot 111 feet 10 inches to the easterly corner of said sub-lot; thence southwesterly along the southeast line of said sub-lot 120 feet; thence northwesterly, parallel with the first described line 41 1/2/12 feet; thence in a line parallel with the northwesterly line of said sub-lot and 70 feet southeasterly therefrom 153 3 1/4/12 feet to a stone in the line of Broadway; thence northwesterly along the line of Broadway 70 feet and ¼ of an inch to a stone on the northwesterly line of said sub-lot; thence northeasterly along said northwest line 274 feet 4 inches to the place of beginning.

Said sub-lot No. 58 being 30 feet front on Mead street and 111 feet deep.

The plat of said allotment is recorded in volume 4 of Maps, page 41 in the recorder's office of Cuyahoga county, Ohio.

157 Parcel number 10.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as being block B. and sub-lots numbers 14, 15, 16, and 22 feet 6¾ inches off the southerly side of sub-lots No. 17 in H. Heisel's sub-division of part of original Brooklyn township lot No. 67.

A plat of said sub-division is recorded in volume 3 of Maps, page 17, in the recorder's office of Cuyahoga county, Ohio.

Parcel number 11.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as being a strip of land fronting on Pearl street, 5 feet in width and nearly 237 feet in length, off the north side of lot No. 1 in the Meyer allotment of part of original lot No. 67 in Brooklyn township, forming the north one-half of a driveway 10 feet in width, subject to be used in common by owners of said lot No. 1 and parcel No. 10 above described; and also an easement in the southerly five (5) feet of said driveway to use the same for such purposes. A plat of said Meyer allotment is recorded in volume 3 of Maps, page 20 Cuyahoga county records.

Parcel number 12.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as being sub-lots Nos. 4, 5, 6 and 7 of Susan Leavitt's sub-division of part of original lot No. 328 in said city as recorded in volume 5 page 39 Cuyahoga County Records of Maps.

Parcel number 13.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and being all of sub-lot 439 and parts of sub-lots numbers 440, 179, 180 and part of Race street (vacated) in Kelley and Wal-
158 worth's allotment of two acre lots 125 to 132 and 213 to 220 etc., as the same is recorded in volume 2 of Maps, page 26 Cuyahoga county records, and described as follows: Beginning in the northeast corner of Canal and Ohio streets; thence easterly along Ohio street 62½ feet to a point 5 feet easterly on the line of Ohio street from the boundary line between sub-lots 439 and 440 of Kelley & Walworth's allotment of part of two acre lots numbers 213 to 220; thence northerly at right angles to Ohio street by a line parallel to said boundary sub-lot line between 439 and 440 and 5 feet easterly therefrom, through said sub-lot 440 and across former Race street and across said sub-lot No. 180 of said allotment and into said sub-lot No. 179, a total distance from Ohio street of about 193½ feet; thence by a line at right angles to Canal street to the easterly line of Canal street; thence along the easterly line of Canal street to the place of beginning.

Parcel number 14.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as all of sub-lots 3, 4, 5, 6, 7 and 8 in Anderson and Barnard's subdivision of part of original East Cleveland township lots 396 and 397, as the same is recorded in volume 5 of Maps, page 46, Cuyahoga county records.

Parcel number 15.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as part of 100 acre lot No. 396, formerly in East Cleveland township, and bounded as follows: Beginning in the center of Euclid avenue, at a stone at the southerly corner of land in said lots 396 and 397 allotted by Anderson and Bernard, as in volume 5 of Maps, page 46; thence southwesterly along the center of said avenue 105 feet to a stone at the corner of land in lot 396 allotted by T. S. Knight; thence south 34° 53′ east 285.52
159 feet to a stone; thence south 23° 25′ east 114.74 feet to a stone; thence south 51° 31′ west 59.73 feet to the easterly line of East End avenue in Knight's allotment; thence south 38° 29′ east 300.70 feet to a stone; thence east 92.8 feet to the westerly line of Anderson and Bernard's allotment of a part of 100 acre lots 396 and 397; thence northerly along the westerly line of said allotment to the place of beginning.

Parcel number 16.

Situated in the township of Newburgh, county of Cuyahoga, State of Ohio, and known as being part of the south half of original lot No. 466 and is bounded and described as follows: Beginning on the south line of Miles avenue and at the northwest corner of land of the Cleveland, Canton and Southern Railroad Co.; thence westerly along the southerly line of Miles avenue 160 feet; thence southerly 290 feet and at right angles to Miles avenue to a stake; thence easterly 160 feet to the westerly line of said Cleveland, Canton and Southern Railroad Co.'s land; thence northerly on the westerly line of said railroad company's land 290 feet to the place of beginning, containing 1 1/15 acres of land.

Parcel number 17.

Situated in the village of Brooklyn, county of Cuyahoga, State of Ohio, and known as a part of original Brooklyn township lot No. 65, and also further known as lots bearing arbitrary or irregular continuous numbers 90, 91 and 92 in Moses Fish's sub-division of a part of said original lot No. 65; as recorded in volume V, page 257 Cuyahoga County Record of Deeds, and together bounded as follows: On the east by the center of Pearl street (formerly Turnpike road); on the south by the center of Wood street on the west by the east lines of sub-lots Nos. 69, 70 and 71 in said Moses Fish's allotment,

and on the north by the north line of said lot 90, being the
160 north line of premises deeded December 28, 1888, by William Prescott and Stillman F. Tupper to the South Side Street Railroad Company.

Parcel number 18.

Situated in the village of Collinwood, county of Cuyahoga, State of Ohio, and known as being a part of tract No. 16 in said village bounded as follows:—Beginning at the southwest corner of land in said tract deeded by W. H. Osborn and wife to Spencer Borden on February 22, 1872, and in the center of an 80 foot avenue or boulevard; thence north 22¾° west on the west line of said land sold to Spencer Borden as aforesaid 10 chains and 36 links to the shore of Lake Erie; thence south 47° west along the shore of Lake Erie 6 chains and 33 links; thence south 22¾° east parallel with the east line 10 chains and 28 links to the center of said avenue or boulevard; thence north 46¼° east along the center of said avenue or boulevard 6 chains and 33 links to the place of beginning, and containing 6.08 acres of land be the same more or less.

Together with all the riparian rights in Lake Erie in front of the same and belonging thereto and are the same premises conveyed to said Jefferson Borden, Jr., by said Osborn by deed dated November 28, 1871, and by said Jefferson Borden, Jr., and wife conveyed to said Harry W. White by deed dated September 21, 1891, and recorded in volume 500, page 589 of Cuyahoga County Records.

Parcel number 19.

A right of way for its double track street railroad through the following lots of F. H. Eggers sub-division of part of original lots 287 and 316 in the city of Cleveland.

Lot No. 137 being 30 feet front on Petrie street with curve on corner of lot No. 136 for 50 feet radius curve with car clearance.
161 Lot No. 99 fronting 30 feet on Huck street.
Lot No. 68 fronting 30 feet on Huck street.
Lot No. 42 fronting 30 feet on Athey avenue.
Lot No. 21 fronting 30 feet on Athey avenue.

And also 32.13 feet on Independence street. But the right of way in said last named lot No. 21 being parallel therewith to the south line of lot No. 19.

Also through lot No. 20 fronting Independence street.

Also parallel to lot No. 19 south line.

Plat of said sub-division recorded in volume 13 of Maps, page 22 in the office of the recorder of said county.

This grant being similar to the one heretofore (prior to August 22, 1887) made to the Brooklyn Street R. R. Co., is given to secure equal joint use of said right of way by both of said companies and as such is accepted by them.

(Deed volume 413, page 538.)

Parcel number 20.

Situated in the city of Cleveland, county of Cuyahoga, State of Ohio, and known as a part of original Newburgh township lot No. 464 and bounded:—Beginning at the intersection of the west line of Woodland Hills avenue with the northerly line of Broadway (regarding each of said streets as being 60 feet wide); thence northwesterly 125 feet along said line of Broadway to a stone; thence southeasterly 108.83 feet to a stone in said west line of Woodland Hills avenue at a point 26 feet from the place of beginning; thence south 26 feet to the place of beginning.

Said premises shall be used for street purposes for the use of the general public, the same to become a part of Broadway street, with the right to the Cleveland Electric Railway Company, its successors and assigns to construct, maintain and operate thereon a sin-
162 gle or double track street railway with all necessary devices, appliances, poles, wires, switches and turnouts.

(Deed volume 608, page 166.)

Parcel number 21.

Situated in the city of Cleveland, county and State aforesaid and known as sub-lot No. 35 of Martha B. Ambler's sub-division of part of original lot No. 411 in said city, and being 42.67 feet front on the northerly side of Cedar avenue, 100 feet deep on the east and west lines (the east line of which being also the west line of Cozad avenue), and is 42.84 feet on the rear line according to the plat of said sub-division in volume 14 of Maps, page 38 in the office of the recorder of said county.

Subject to the condition which runs with the land that no building whatever shall be erected on said lot within 20 feet from the front line of said lot on Cedar avenue; and subject also to the further condition that no liquor, either spirituous, vinous or fermented shall be sold at wholesale or retail on said premises.

(Deed volume 557, page 274.)

Parcel number 22.

Situated, partly in the city of Cleveland, and partly in the hamlet of Newburgh, and known as part of sub-lots 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of Turner and McConnell's sub-division of part of original lots 465 and 473.

Also part of original lot 473 in Cleveland and 474 in the hamlet of Newburgh, altogether described as follows:—Known as being a strip of land 20 feet in width measured northerly from the right of way of the Cleveland & Pittsburg R. R. Co., and bounded on the west by McConnell street, and extending easterly from Calvary cemetery to its easterly boundary line.

163 Also the right to use so much of the land of said Calvary cemetery outside of and in addition to said 20 foot right of

way as is necessary to properly construct and maintain a solid embankment of equal height with the driveway, running through Calvary cemetery easterly from McConnell street, which embankment grantee agrees to construct in extending its railway and maintain the same until the cemetery management can fill in up to the line of said 20 feet hereby conveyed.

(Deed volume 605, page 558.)

Parcel number 23.

Situated, partly in the city of Cleveland, and partly in the hamlet of Newburgh, and known as part of sub-lots 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of Turner and McConnell's sub-division of part of original lots 465 and 473.

Also part of original lot 473 in Cleveland and 474 inthe hamlet of Newburgh, and altogether described as follows:—Known as being a strip of land 10 feet in width measured northerly from a strip of land 20 feet in width heretofore conveyed by I. Horstman to the Cleveland Electric Railway Company by deed dated September 21, 1895 in volume 605, page 558 of the records of said county.

Said land hereby conveyed being bounded on the west by McConnell street; on the south by the northerly line of said 20 foot strip; on the east by the easterly line of Calvary cemetery; on the north by the line parallel with said southerly line and 10 feet distant therefrom.

Also the right to use so much of the land of said Calvary cemetery outside of and in addition to said 10 foot right of way as is necessary to properly construct and maintain a solid embankment of equal height with the driveway running through Calvary cemetery easterly from McConnell street, which embankment the Cleveland Electric Railway agrees to construct in extending it railway
164 and maintain the same until the cemetery management can fill up the line of said 10 feet hereby conveyed.

(Deed volume 615, page 170).

Parcel number 24.

Situated in the city of Cleveland, county and State aforesaid, and known as sub-lots 20, 21 and 22 in M. A. Woodbridge and others' sub-division of part of original lot 455 in said city.

Said lot No. 20 has a front of 25 feet on Harvard street and is 100 feet deep.

Said lot No. 21 has a front of 25 feet on Harvard street and is 100 feet deep on the northerly line and 99 4/12 feet deep on the southerly line.

Said lot No. 22 has a front of 25 feet of Harvard street and is 99 4/12 feet deep on the northerly line and 77 41/2/12 feet deep on the northerly line as shown by the plat of said allotment in volume 8 of Maps, page 30 of Cuyahoga county records.

(Deed volume 615, page 182.)

Parcel number 25.

Situated in the city of Cleveland, county and State aforesaid. Known as sub-lots 1 and 2 of John M. Woolsey's sub-division of part of original 2-acre lots 134 to 138 in said city.

Each of said lots being 25 feet front on Parkman street (now Scovill avenue) and extend back 100 feet to Parkman alley, according to the map of said sub-division in volume 2 of Maps, page 23, in the office of the recorder of said county.

(Deed volume 657, page 563.)

Parcel number 26.

Situated in the city of Cleveland, county and State aforesaid, and known as sub-lot No. 270 in Byerle's sub-division of original lots 286 and 287 in said city.

165 Said lot being at the northeast corner of Hugo and Beyerle streets and having a frontage of 123.04 feet on Hugo street and a frontage of 66.90 on Beyerle street and being 120 feet deep at right angles from Beyerle street on its easterly side and 40.13 feet on its rear line parallel with the northerly line of Beyerle street according to the plat of said sub-division on record.

(Deed Record 657, page 563.)

Parcel number 27.

Situated in the city of Cleveland, county and State aforesaid, and known as sub-lots 5, 6 and 7 in J. H. Sargent sub-division of part of original lot No. 34, formerly in the township of Brooklyn now in said city.

Said tract fronts 125 feet on the south side of Clark avenue next east of the corner of Alum street.

Lot 5 is at the southeast corner of Clark avenue and Alum street and is 45 feet front on Clark avenue and 124 feet and 9 inches deep on Alum street and 125 4/12 feet deep on its east line to a 12 foot alley.

Lot 6 is 40 feet front on Clark avenue by 125 feet 4 inches deep on its west line and 126 feet deep on its east line to said 12 foot alley.

Lot 7 is 40 feet front on Clark avenue by 138 feet deep on its west line and 138 feet 11 inches deep on its east lne and 140 feet wide also at its rear line as shown in volume 4 of Maps, page 36 of the records of said county.

(Deed volume 657, page 563).

Parcel number 28.

Situated in the city of Cleveland, county and State aforesaid and known as sub-lot No. 26 of Susan and Charles Leavitt's sub-division of part of original lot No. 328 in said city as recorded in vol-

166 ume 5 of Maps, page 39 in the office of the recorder of said county.

Said lot No. 26 is situated on the south side of Diamond park, having a front of 40 feet by 160 feet deep to a 15 foot alley, according to said plat.

(Deed volume 657, page 563.)

Parcel number 29.

Situated in the Hamlet of Newburgh, county and State aforesaid and known as being part of the south half of original lot No. 466 and bounded beginning at the southwest corner of a certain 10 foot strip of land heretofore conveyed by Charles P. Jewett and wife to the Broadway and Newburgh Railway Co., by deed dated May 20, 1890, and extending thence southerly with the prolongation of the west line of said 10 foot strip of land 290 feet; thence easterly and parallel with the south line of Miles avenue 205 feet to the west line of the lands of the Cleveland, Canton and Southern Ry. Co.; thence northerly with said west line 293 feet to the southeast corner of the land heretofore conveyed by said Charles P. Jewett and wife to the Broadway and Newburgh Ry. Co., by deed of December 2, 1889; thence westerly with the south line of said lands and the south line of said 10 foot strip of land 165 feet to the place of beginning containing 1.21 acres of land.

(Deed volume 666, page 450.)

Parcel number 30.

Situated in the city of Cleveland, county and State aforesaid and known as the northeasterly part of sub-lot No. 21 of Catharine Smith's sub-division of part of original lots 282 and 324 in said city.

Said part of said lot No. 21 is bounded northerly, easterly and westerly by the lines of said lot and southerly by a line parallel with the northerly line and 15 feet distant therefrom and being 15 feet front on Smith street and 115 feet deep.

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Plat of said sub-division is recorded in volume 9 of Maps, page 33 in the office of the recorder of said county.

Parcel number 31.

Situated in the village of East Cleveland, county and State aforesaid, known as part of original lots 4, 5, 371 and 383 of the original survey of the township of East Cleveland and bounded and described as follows:—Beginning in the center of Euclid avenue at the southeasterly corner of land owned by Henry Bender in said lot No. 5, which is also the most southerly corner of lands now owned by H. A. Haygood; thence north 45° 58′ west along the line between lands of said Bender and said Hawgood to the center of Hayden avenue, so called as recently opened and laid out; thence northerly along the center of Hayden avenue as now opened, laid out and occupied to the north line of lands now owned by said H. A. Hawgood in the center of a street called Doan street; thence east along

the north line of lands of said Hawgood and in the center of Doan street to the easterly line of lot No. 374; thence south along the east line of lot No. 374, 1008.78 feet to an angle in said Hawgood's easterly line; thence south 46° 7′ east 694.94 feet to the center of Euclid avenue; thence south 36° 6′ west 304.47 feet to the place of beginning and supposed to contain about 19 acres, subject to and excepting all the rights of the N. Y. Chicago & St. Louis R. R. Co., across the said land.

Excepting, however, from the above described premises that portion thereof conveyed by the Cleveland Electric Railway Co., to W. J. Crawford by deed dated April 4, 1896, in volume 643, page 506 in the office of the recorder of said county, which portion, so conveyed to Crawford is described as follows:—Known as part of original lots 5 and 382 in said township and bounded beginning at a point in the center of Euclid avenue at the southwesterly
168 corner of land in said lot conveyed by H. A. Hawgood and wife to the Cleveland Electric Railway Co., by deed dated Sep. 26, 1895, and recorded in volume 605, page 586 of the deed records of said county; thence north 45° 58′ west along the westerly line of said land 705 feet more or less to the southerly line of the right of way of the N. Y. Chicago & St. Louis Ry. Co.,; thence north 36° 20′ east along said southerly line of said right of way of said railway Co., 228.05 feet more or less; thence south 45° 58′ east and parallel with the first line as herein described 710.8 feet more or less to the center of Euclid avenue; thence south 37° 47′ west along the center of said Euclid avenue 227.35 feet more or less to the place of beginning, containing 3.672 acres.

Parcel number 32.

Situated in the village of East Cleveland, county and State aforesaid, and known as being part of original lots Nos. 4 and 5 and bounded as follows:—Beginning in the center of the Plank road (now Euclid avenue) at the east corner of land formerly owned by George Dodge; thence north 46° west 10 chains and 88 links on Dodge's northeast line; thence north on Dodge's east line 8 chains and 20 links; thence south 42° east 16 chains and 25 links to the center of the road; thence south 39¼° west 4 chains and 86 links to the place of beginning, containing 7.08 acres of land, but excepting a strip of land 66 feet in width and extending across said land heretofore conveyed to the N. Y. C. & St. L. Ry. Co., by deed recorded in volume 327, page 378 of the records of said county.

Also excepting therefrom a strip of land 13 feet in width on the southerly side of the above described lands along the entire frontage of said property heretofore conveyed to the village of East Cleveland by deed dated March 13, 1896, for the purpose of widening Euclid avenue.

(Deed volume 659, page 18.)

169 Parcel number 33.

The exclusive right to the use for street railway purposes of the following described premises, to-wit: situated in the township of East Cleveland, and known as being a strip of land 30 feet in width throughout its entire length, the center line of which strip of land is described as follows: Beginning at a point lying north 45° 25′ east a distance of 77.45 feet from a point in the westerly line of original 100 acre lot No. 401 which said last named point is 63.93 feet north from the southwest corner of said original 100 acre lot No. 405; thence from said last named point north 45° 25′ east 356.58 feet to a point; thence in a northeasterly direction along a line tangent to said last described course at said last described point, and describing an arc having a radius of 1666.42 feet a distant of 796.37 feet to a point, said arc lying on the northwesterly side of its cord; thence in a northeasterly direction in a straight line tangent to said last described course at said last described point a distance of 501.76 feet to a point; thence in a northeasterly direction along a line tangent to said last described course at said last described point and describing an arc having a radius of 1260.63 feet, a distance of 573.22 feet to a point, said arc lying on the southeasterly side of its cord; thence in a northeasterly direction in a straight line tangent to said last described course, at said last described point a distance of 745 feet to a point; thence in a northeasterly direction along a line tangent to said last described course at said last described point and describing an arc having a radius of 2442.29 feet a distance of 1775.37 feet to a point; said arc lying on the northwesterly side of its cord; thence in a northeasterly direction in a straight line tangent to said last described course at said last decribed point a distance of 294.36 feet to a point; thence in a north-
170 easterly direction along a line tangent to said last described course at said last described point, and describing an arc having a radius of 1047.11 feet, a distance of 317.54 feet to a point, said arc lying on the southeasterly side of its cord; thence in a northeasterly direction along a line tangent to said last described course at said last described point, and describing an arc having a radius of 393.94 feet, a distance of 256.40 feet to a point, in the easterly line of Coventry road, said arc lying on the southeasterly side of its cord, subject to all legal highways.

Excepting and reserving therefrom unto the said grantors their successors and assigns, the right to cross said above described premises, with cross-walks and streets, and to lay and maintain under the surface of said premises, water, gas and drain pipes and mains, and sewers and electric conduits, in such manner as not to improperly interfere with the street railway uses thereof, at the option of said grantors, their successors or assigns.

Also excepting and reserving therefrom to said grantors their successors and assigns, the right to at any time dedicate to the public for the use as a public highway the whole or any part of the above

described premises, subject only to the right of the grantee herein, its successors and assigns, to use said premises for the purposes herein expressed.

To have and to hold the use of the above described premises unto the said grantee, its successors and assigns forever, for a right of way for the construction and maintenance thereon of a street railway in conformity with the terms and provisions of a contract in writing made and entered into at Cleveland, O., 12th of July, 1896, by and between Patrick Calhoun, the Euclid Heights Co., and the Euclid Heights Realty Co., as parties of the first part, and the grantee herein (the Cleveland Electric Railway Co. a corporation) as
171 party of the second part, and this grant is made subject to the express condition that said grantee, its successors and assigns shall well and truly do and perform all the matters and things in said contract agreed to be done and performed by it, its successors and assigns, and if default be made at any time by the grantee, its successors and assigns in the performance of any of the obligations by grantee assumed, in said contract and agreement, then all the rights, privileges and easements hereby granted, shall revert to the said grantors, their successors and assigns, at their option, and any such default against the rights of either of said grantors, its successors or assigns, shall be an equal default against the rights of both of said grantors, their successors or assigns.

(Record vol. 699, p. 213.)

Parcel number 34.

The perpetual and exclusive right to lay, maintain and operate a double track street railway upon, over and along the following described premises:—city of Cleveland, and known as being parts of original 100 acre lots 402 and 403 and being so much of a strip of land 25 feet in width as is contained in the land conveyed to Patrick Calhoun, by deed as follows:—from B. W. Haskins, dated May 1st, 1896, recorded in volume 631, page 425; from Western Reserve university, dated June 23rd, 1896, recorded in volume 643, page 487; from B. W. Haskins, Eudalia H. Benjamin, dated May 8, 1897, recorded in volume 667, page 528; from the estate of H. H. Little, deceased, dated October 29, 1897, recorded in volume 691, page 2 Cuyahoga County records and in sub-lots Nos. 19, 10, 11, 12, 13, 14, 15, 20, 21, 22 in L. M. Southern's sub-division, a plat of which is recorded in volume 8, page 31 Cuyahoga County records of maps; and in sub-lots Nos. 75, 76, 77, 78, 79 and 80 of L. E. Holden's allotment No. 2, a plat of which is recorded in
172 volume 10, pages 25 and 26, Cuyahoga County records of maps; the center line of which strip of land being described as follows:

Beginning at a stone in the center line of Euclid avenue both eastward and westward, said stone being 18.45 feet easterly from a stone in the center of Euclid avenue and Fairmount street

south; thence north 87° 39′ 30″ east 150.12 feet to a point from which a stone, the center of the proposed Euclid circus bears north 87° 39.5′ east 153.60 —; thence on a curve to the right having a radius of 240 feet through an arc the cord of which bears south 76° 20.5′ east 132.31 feet; to a point from which the above mentioned stone in Euclid circus bears north 13° 26′ east 46.79 feet; thence south 60° 20.5′ east 107.05 feet to a point from which a stone bears south 29° 39.5′ west 37.50 feet; thence continuing on the same course south 60° 20.5′ east 669.10 feet to a point from which a stone bears south 29° 39.5′ east 37.50 feet; thence on a curve to the right having a radius of 397.28 feet through an arc the cord of which bears south 30° 20′ east 397.42 feet to a point in Stearns street; which is 12.5 feet westerly from the east line of said street.

Also such portions of sub-lots Nos. 15, 28 and 29 in L. E. Holden's allotment as appears of record in volume 8 page 19 Cuyahoga County records as are contained in a strip of land 25 feet in width the westerly boundary of which is described as follows: Beginning at the intersection of the south line of Fairchild street with the east line of Stearns street, and running south 29° 8′ east through the northwest corner of sub-lot 15, to the north line of Cedar avenue.

Together with the perpetual right to use and occupy such portion of the adjoining premises of the grantor as may be necessary for the erection — maintenance of poles for overhead construction for electric lines.

173 This conveyance is made subject to all the provisions of a certain contract in writing dated June 12, 1896, by and between Patrick Calhoun, the Euclid Heights Co., and the Euclid Heights Realty Co., as first party and the grantee, (the Cleveland Electric Railway Co., a corporation) herein as second party; and in the event said grantee shall fail to perform any of the stipulations in said contract on its part to be performed the rights in said premises hereby conveyed shall revert to the said grantor.

(Record vol. 691, p. 384.)

STATE OF OHIO, } ss:
Cuyahoga County, }

Arthur Odell being first duly sworn says that he has examined the records of Cuyahoga county and the tax duplicate of the same, and that the foregoing abstracts contain a complete list of the real estate of the Cleveland Electric Railroad Company and of its several constituent companies.

ARTHUR ODELL.

Sworn to before me by the said Arthur Odell and by him subscribed in my presence this 21st day of December, 1898.

[SEAL] JACOB M. CRAWFORD,
Notary Public.

Tax fees 40c.

174 Endorsements on affidavit of Arthur Odell: No. 5840. U. S. circuit court. The Cleveland Electric Railway Co., plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of Arthur Odell, on behalf of defendant. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, attorneys for the City of Cleveland.

Affidavit of Wm. G. Taylor.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of Wm. G. Taylor.

Wm. G. Taylor, being first duly sworn deposes and says: That he is a broker and dealer in real estate in and about the city of Cleveland, Ohio; that he has been engaged in such business in said city for the period of 25 years; that he is familiar with real estate values in, throughout and about said city, and that between the 17th
175 day of December, 1898, and the 22nd day of December, 1898, in company with one John W. Taylor and Chas. E. Pegler, he made a complete and thorough examination and view of the real estate of the Cleveland Electric Railway Company located in the city of Cleveland, for the purpose of ascertaining the fair and reasonable value thereof; that the number of pieces and parcels of real estate so examined and estimated by him are fully described in the affidavit of Arthur Odell, filed in this case, to which reference is hereby made for a more specific description thereof.

Affiant further says, that in his opinion the fair and reasonable value of the real estate of the Cleveland Electric Railway Company in the city of Cleveland as shown and described in the said affidavit filed by the said Arthur Odell and including all of the real estate therein described from parcel No. 1 to No. 30 inclusive is $223,769.00. Affiant says that said valuation does not include the value of any improvements or buildings on any of said real estate.

WM. G. TAYLOR.

Sworn to by the said Wm. G. Taylor and by him subscribed in my presence, this 22nd day of December, 1898.

[SEAL.] OSCAR J. HORN,
Notary Public.

Tax fee 40c.

Endorsements on affidavit of Wm. G. Taylor: 5840. United States circuit court. The Cleveland Electric Railway Company *vs.*

The City of Cleveland. Affidavit of Wm. G. Taylor, on behalf
176 of defendant. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, att'ys for def't.

Affidavit of Chas. E. Pegler.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5840. Affidavit of Chas. E. Pegler.

Chas. E. Pegler, being first duly sworn deposes and says: That he is a broker and dealer in real estate in and about the city of Cleveland, Ohio; that he has been engaged in such business in said city for the period of 5 years; that he is familiar with real estate values in, throughout and about said city, and that between the 17th day of December, 1898, and the 22nd day of December, 1898, in company with one John W. Taylor and one Wm. G. Taylor, he made a complete and thorough examination and view of the real estate of the Cleveland Electric Railway Company located in the city of Cleveland, for the purpose of ascertaining and estimating the fair and reasonable value thereof; that the number of pieces and parcels of real estate so examined and estimated by him are fully described in the affidavit of Arthur Odell, filed in this case, to which reference is hereby made for a more specific description thereof.

Affiant further says, that in his opinion the fair and reasonable value of the real estate of the Cleveland Electric Railway
177 Company in the city of Cleveland, as shown and described in the said affidavit filed by the said Arthur Odell and including all of the real estate therein described from parcel No. 1 to No. 30 inclusive is $223,769.00. Affiant says that said valuation does not include the value of any improvements or buildings on any of said real estate.

CHAS. E. PEGLER.

Sworn to by the said Chas. E. Pegler and by him subscribed in my presence, this 22nd day of December, 1898.

[SEAL.] OSCAR J. HORN,
Notary Public.

Tax fees 40c

Endorsements on affidavit of Chas. E. Pegler: 5840. U. S. circuit court, northern dist. of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleve-

land, defendant. Affidavit of Chas. E. Pegler on behalf of defendant. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd & Crowl, attorneys for defendant.

178 *Affidavit of Robert B. Rifenberick.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMpany, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant.

No. 5840. Affidavit of Robert B. Rifenberick.

Robert B. Rifenberick being first duly sworn deposes and says: That he is thirty-one years of age, a resident of the county of Cuyahoga, Ohio, and is by profession and occupation an electric street railway engineer and builder; that he has followed the profession and occupation of steam and electric street railway engineering and building for the period of about twelve years last past, and that his experience in that line has been in various parts, and various cities of the United States, and has covered the various kinds of steam and electric street railway construction and equipment which have been in use by street railway owners and operators during said period of time.

Affiant further says that his professional and business career commenced a few years prior to the adoption of electricity as a motive power by street railway owners and operators generally, and that throughout his professional career his work has not only covered the construction of entirely new lines of electric street railway but has also covered the reconstruction of what were originally street railways operated by horse power and the changing of the complete equipment thereof so as to adapt the same to the use of electricity as a motive-power; that in the capacity above stated he has been connected with and had charge of the construction of large systems of electric street railway in the city of New Orleans, and has also
179 been connected as an engineer with the construction of various other lines and systems of steam and electric street railway in other cities and places in the United States.

Affiant further says that he has made investigations and observations and taken a view of the lines and systems of street railway in the city of Cleveland within the ten days last past, with a view of ascertaining the cost of constructing street railways in said city substantially as the same are constructed and on such streets and throughout such parts of the city, as the same now exist; that he has taken into consideration the commercial and economic advantages and situation of said city, the character of the soil, the

gradients, and general contour of the city and the streets thereof, and particularly that portion of the streets occupied by street railways.

Affiant says, that in view of the conditions existing in said city, and particularly in view of the fact that the grades on the streets occupied by street railways are generally light; that the cost of street railway construction in said city is no greater than it is in average cities; that there are no unusual or extraordinary conditions existing in said city that would make, or tend to make, street railway construction therein extraordinarily expensive; and that based upon his observations and investigations in said city, and upon his experience as an engineer and builder affiant says, that the fair and reasonable cost of constructing a modern, improved, electric street railway line and system of road upon and over such streets of the city of Cleveland as are now occupied by the tracks of the Cleveland Electric Railway Company is and would not exceed $35,000 per mile, single track construction, which sum includes the cost of paving a space seven feet in width throughout the entire length of such single track construction, and also includes all necessary power-houses, car-barns and overhead construction,
180 motors, cars and equipment completed sufficient to equip said lines and system of road for the operation of cars thereon; and affiant says, that said estimate is based upon first-class construction and equipment in every respect and particular.

Affiant further says, that he is informed, and so states upon information, that the Cleveland Electric Railway Company as at present operated, owns and operates about one hundred miles of single track measurement of street railway in the city of Cleveland.

Affiant says that if such information be correct that the entire street railway plant and system of the Cleveland Electric Railway Company can at present be reproduced with modern, first class construction and equipment, including everything necessary for the management, care and operation of said system for the sum of three million five hundred thousand dollars.

Affiant further says that an electric street railway system constructed at the cost above named, and according to modern methods, and with modern materials and equipment, as above stated, would make a materially better, and more serviceable road than that which is now maintained and operated by the Cleveland Electric Railway Company.

ROB'T B. RIFENBERICK.

Sworn to by the said Robert B. Rifenberick, before me, and by him subscribed in my presence this thirteenth day of December, A. D. 1898.

CHAS. G. F. VON W. EMERY,
[SEAL.] *Notary Public.*

Tax fees forty cents.

181 Endorsements on affidavit of Robert B. Rifenberick: 5840. U. S. circuit court. The Cleveland Electric Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Affidavit of Robert B. Rifenberick on behalf of defendant. Filed Dec. 22, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O. Miner G. Norton, Ford, Boyd and Crowl, attorneys for The City of Cleveland.

Affidavit of John J. Stanley.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of John J. Stanley.

John J. Stanley, being duly sworn, says that he is manager of the Cleveland Electric Railway Company, and has been such manager since its organization in April, 1893; that before said organization he was a director and managing officer of the Broadway & Newburg Street Railroad Company, one of the companies which formed the present complainant company.

182 Affiant says that he has read the affidavit of Horace E. Andrews dated December 22, 1898, and filed herein; that he is familiar with the facts therein stated; that the same are true to his knowledge, and that he makes said affidavit a part of this his affidavit as if the same were fully written herein.

Affiant says that the Euclid Avenue line of the complainant company is, and has been ever since the organization of the complainant company, operated over the same route over which it was operated by the East Cleveland Railroad Company, but that the limit within which passengers may ride for a single fare has been extended easterly, and a portion of the line within said single-fare limit which was single track at the time of the organization of the complainant company has since been double-tracked; that immediately after the organization of the complainant company it began to give, and has ever since continued to give, free transfers to such of its passengers upon said line as desired the same, from said line to many others of its lines, namely, to Scovill avenue, Broadway, Union street, Jennings avenue, Pearl street, Scranton avenue, Willson avenue and Fairfield street, and has accepted upon its Euclid Avenue line transfers from said other lines.

Affiant further says that the Wade Park Avenue line of the complainant company has been, ever since the formation of the complainant company, operated over the same route east of the public square over which it was operated by the East Cleveland Railroad Company, but that shortly after the organization of the present

company it was coupled to the Pearl Street and Brooklyn line of the company, and the two lines were operated as one until the summer of 1898, when said Wade Park Avenue line was disconnected from said Pearl Street and Brooklyn line and joined to the Broadway line of the complainant company, and has ever since
183 been operated in connection with said Broadway line; that prior to the consolidation which formed the Cleveland Electric Railway Company no transfers were given from or accepted upon said Wade Park Avenue line to or from any other line of street railway; that ever since said consolidation the complainant company has given to such of its passengers upon said Wade Park Avenue line as desired the same, free transfers from said line to other lines, namely: at the easterly terminus of said line to cars bound easterly upon Euclid avenue; at Willson avenue to cars bound north or south on Willson avenue; at the public square to cars upon the Scovill Avenue, Broadway, Union Street, Jennings Avenue, Pearl Street, Scranton Avenue, Fairfield Street and the Union Depot lines, and that it has accepted upon said Wade Park Avenue line transfer tickets issued from said other lines, and carried the holders thereof, without extra charge, to such points as they wished to reach upon said Wade Park Avenue line.

Affiant further says that the Cedar Avenue line of the complainant company has been ever since said consolidation operated upon that part of the route east of the public square as it was operated by the East Cleveland Railroad Company prior to said consolidation, except that it has been extended further eastward, no additional fare being charged by reason of such extension, but that at the public square it was, shortly after the consolidation, coupled to the Jennings Avenue and Brooklyn line of the complainant company, and has ever since been operated in connection with said Jennings Avenue and Brooklyn line as one line; that prior to the consolidation no transfer tickets were issued to or accepted from passengers upon said Cedar Avenue line, but that since said consolidation free transfers have been issued from said line to the following lines of said company, namely: Scovill Avenue, Broadway, Union
184 Street, Jennings Avenue, Pearl Street, Scranton Avenue, Willson Avenue, Fairfield Street, Abbey Street, Clark Avenue and Union Depot lines, and transfers issued to passengers upon said lines have been accepted upon the Cedar Avenue line.

Affiant further says that it will be impossible for complainant company to operate its said Euclid Avenue, Wade Park Avenue and Cedar Avenue lines at a profit at the rates of fare sought to be established by the ordinance of October 17, 1898, even if no transfers be issued from or accepted upon said lines; that to abolish the transfer privileges to and from said lines would require a change of present routes to the disadvantage of the public, and would result in confusion, altercations between passengers and conductors, litigation, and involve the company in expense; that the enforcement of the provisions of said ordinance would shorten the distance over which

passengers may now ride for a single fare, and would result in an increase of the fare which passengers desiring to ride from any point upon any one of said three lines to any point upon any other of said company's lines would have to pay.

JOHN J. STANLEY.

STATE OF OHIO, *Cuyahoga County,* } ss:

Sworn to before me, and subscribed in my presence, by said John J. Stanley, this twenty-second day of December, 1898.

[SEAL.] WM. J. MEAD, *Notary Public.*

185 Endorsements on affidavit of John J. Stanley: 5840. The Cleveland Electric Railway Co., *vs.* The City of Cleveland. Affidavit of John J. Stanley. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Affidavit of Horace E. Andrews.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of Horace E. Andrews.

Horace E. Andrews, being duly sworn, says that he is president of the Cleveland Electric Railway Company, and has been such president since January, 1894; that he has been engaged in the active management of street railroads in the city of Cleveland for eight years last past; that before the organization of the complainant company he was connected with the Broadway & Newburg Street Railroad Company, which, with other companies, formed the consolidated company now known as the Cleveland Electric Railway Company; that he was familiar with the construction and operation of said Broadway & Newburg street railroad, and since the consolidation aforesaid has been familiar with, and actively
186 concerned in, the management of all the affairs of the consolidated company; that during all said period of his connection with the business of constructing and operating street railroads he has known the market prices of street railroad track, rolling stock, machinery, electric equipment and other material.

He says he has read the affidavit of Robert B. Rifenberick filed in behalf of the defendant in the above entitled cause, and he says with reference thereto that the estimate of the cost of reproducing

complainant's road is too low, even at present prices of street railroad equipment and material; that, whatever said road could be reproduced for at this time, the road and property of the Cleveland Electric Railway Company has cost much more than $35,000 per mile; that the road of the complainant company comprises 125 miles of track; that it was built at various times in the past forty years, keeping pace with and promoting the growth of the city; that it was not laid down without legal and other obstructions in a ready-made city of nearly 400,000 inhabitants, at prices at which street railroad equipment and material can be obtained in 1898, but was first built as a first-class horse railroad, measured by the street railroad standard of the times in which it was constructed, and later, in the experimental stage of electric street-railroad construction, was reconstructed and re-equipped at great expense from additional capital, and after said reconstruction many of its lines of railroad, by reason of the imperfect state of development of electric railroading, were operated not only without profit, but at a substantial loss; that since said reconstruction and re-equipment for electric operation, nearly all of its tracks have been again reconstructed with heavier rails, its poles and wires have been replaced with poles and wires of better design and construction, its cars have been superseded by larger and improved cars, the motors that it purchased
187 nine and ten years ago have been thrown into the scrap heap, a second equipment of motors has also been discarded, and upon most of its cars the company has now its third or fourth equipment of motors; the generators and engines in its power-plant have been superseded by more modern generators and engines, in larger units, and its first investment in powerhouse machinery has been substantially lost.

As to the cost of street railroad material and equipment, affiant says that present market prices are much below the market prices of ten or even five years ago and the prices which complainant company and its predecessors were compelled to and did pay for their material and equipment; that the present market price of steel rail, for instance, is about $25.00 per ton, whereas complainant company and its predecessors were compelled to pay and did pay for the greater part of their rail from $35 to $50 per ton; that electric car equipments, because of competition in, and the rapid development of, the business of manufacturing electric machinery, can be readily purchased at $650 per car equipment, by which he means the two motors and their appliances which are operated under each motor-car, whereas many of the equipments of the Cleveland Electric Railway Company and its predecessors cost $2,300 per car, and some as high as $3,000 per car; that, to affiant's knowledge, small car-bodies sixteen feet in length were purchased by one of the companies composing complainant company at $1,600 each, while, at present prices, a much better car body, twenty-four feet in length, can be purchased for less than $900; that most of the blockstone pavement in the company's tracks within the city limits

cost not less than thirty cents per square foot, whereas, during the past year, blockstone pavement has been laid for twenty-four cents per square foot.

He says, however, that, while prices of electric apparatus and of other street-railway material have been, within the past
188 decade, nearly or quite cut in two, and have been brought to an almost unprofitable rate, because of fierce competition among manufacturers, it is entirely possible, and indeed quite probable, that, by reason of recent combinations of electrical manufacturing interests, the prices of apparatus will be materially advanced.

Affiant says that, besides the capital invested by the four companies which united to form the present complainant company, the amount of which as to some of the said companies he does not know, except as it may be shown by their books, the Cleveland Electric Railway Company has, since its organization, expended about $2,000,000 of new capital for extensions of lines and for additions and improvements of machinery and equipment.

He says that many of the lines of said company were for a long time after their construction, and some of them are still, operated at a loss, and that the outer ends of all its lines are operated at a loss, because of the sparsely settled territory through which they run.

He says that for a single fare a passenger on the company's cars is afforded the privilege, through a system of free transfers, of a ride of sixteen miles.

He says that the substantially uniform rate of fare on street railroads in the United States in cities of the size of Cleveland, and even in cities much larger than Cleveland, is a straight fare of five cents; that in many large cities, notably in New York, Philadelphia, Chicago and Boston, no discount is made for tickets, and the privileges of free transfer from line to line are much more limited and restricted than in Cleveland.

He says that about 45 % of the cost of operating electric street-railways is paid in wages to employees; that this item of expense is inflexible, and cannot be reduced; that if the rates of fare
189 sought to be established by the ordinance of October 17, 1898, are held to be legal and are enforced, and the company is compelled to continue to operate the lines affected, it will have to do so at a loss, or, if not, that the difference must be made up by a reduction in the other 55 % of its operating expenses, namely, the cost of maintaining its tracks, cars, equipment, and other property, and it will be unable to keep the same in first-class condition and furnish the improved service demanded by the public, or to keep up its present standard of service.

He says that all of the lines of the companies which formed the present complainant company were for many years operated without return to their stockholders; that no part of the principal invested in said property has been returned, and that the dividends which have been paid to stockholders do not amount to a reasonable in-

terest upon the money invested in the property; that, in his opinion, it will be impossible for the company, even at existing rates of fare, to earn enough within the periods of its existing franchises to pay its operating expenses and taxes, to provide for the rapid depreciation in the value of its property, to pay the interest upon its bonded debt, to pay to its stockholders reasonable dividends upon the money actually invested in the property, and to set aside a sinking fund to retire its bonds and provide for a return to its stockholders of the money so actually invested, less the value of its plant and property at the expiration of its said franchises.

He says, as he said in the bill of complaint in this action, that the rates of fare sought to be established by said ordinance of October 17, 1898, are less than the operating expenses and bond-interest charges were per passenger in the years 1896 and 1897, and that said rates of fare are unreasonable and would not permit the
190 company to do business at a profit.

HORACE E. ANDREWS.

STATE OF OHIO, *Cuyahoga County,* } *ss:*

Sworn to before me, and subscribed in my presence, by said Horace E. Andrews, this twenty-second day of December, 1898.

[SEAL.]

WM. J. MEAD,
Notary Public.

Endorsements on affidavit of Horace E. Andrews: 5840. The Cleveland Electric Railway Co., *vs.* The City of Cleveland. Affidavit of Horace E. Andrews. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Affidavit of Wm. G. Beck.

In the Circuit Court of the U. S., Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RY. CO. *vs.* THE CITY OF CLEVELAND. } Affidavit of Wm. G. Beck.

William G. Beck, being duly sworn, says that he is the secretary of the annual city board of equalization, and the same William G. Beck who made an affidavit which was filed by the City of Cleveland in the above-entitled cause; that in some of the
191 years named in said affidavit in which the companies therein named made returns of personal property for taxation the city board of equallization or the county board of equalization

increased the valuation of said personal property so that said companies paid taxes upon valuations greater than those named in his said affidavit; that in 1898, the city board of equalization, appointed by the mayor of the city of Cleveland, raised the valuation of the personal property of the Cleveland Electric Ry. Co., to $1,991,205; that this, in the opinion of the board, after hearing testimony and argument, and after careful consideration of the matter, was a fair valuation of said personal property within the limits of the city of Cleveland; that it has been the custom and practice in the city of Cleveland, which practice was followed by the city board of equalization in 1898, to assess the personal property of individuals and corporations in the city for taxation at about 60 % of its true value; that the board intended to assess the property of the Cleveland Electric Ry. Co., for taxation upon this basis, which was the basis of valuation adopted by the board as to all property which came before it for equalization of values or for assessment for taxation; that in making said assessment of $1,991,205 upon the personal property of said company, the board included none of the land, buildings or fixed machinery of the company within the city, and it had no jurisdiction over, and therefore did not attempt to place a value upon any of the track, land, buildings or other property of the company outside of the city of Cleveland; but he says that the board, in fixing said valuation, did consider the value of the company's franchises within the city.

WILLIAM G. BECK.

STATE OF OHIO, }
Cuyahoga Co., } *ss:*

Sworn to before me by said William G. Beck, and by him
192 subscribed before me, this 21st day of December, 1898.

[SEAL.] JACOB M. CRAWFORD,
Notary Public.

Endorsements on affidavit of Wm. G. Beck: 5840. The Cleveland Electric Railway Co., *vs.* The City of Cleveland. Affidavit of Wm. G. Beck. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Affidavit of Henry J. Davies.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of Henry J. Davies.

Henry J. Davies, being duly sworn, says that he is assistant secretary & treasurer of The Cleveland Electric Railway Company, complainant in the above-entitled cause, and has been such assistant secretary & treasurer for several years last past; that as such officer he knows what said company's passenger receipts have been since its organization.

He says that in the year 1897, said company received upon its Euclid Avenue line the number of cash and ticket fares and the amounts of money shown in the following table:

193	3,700,767	cash fares	$185,038.35
	3,531,315	ticket "	156,451.51
	7,232,082	total "	$341,489.86

That said amount was the entire amount received by said company for the carriage of passengers upon its said Euclid Avenue line in 1897; that the average rate of fare upon said line in said year was, therefore, 4.72 cents per passenger; that, assuming that in the year 1897, the rates of fare sought to be fixed by the ordinance complained of in the bill of complaint had been charged and collected, the company's receipts upon said line in that year would have been:

From	3,700,767	passengers at 4c. each	$148,030.68
"	3,531,315	" at 7 for 25c	126,118.39
"	7,232,082	"	$274,149.07

And that, at said rates, the average fare per passenger would have been 3.79 cents; that this would have been a reduction in the company's gross receipts from said line of $67.340.79, or nearly 20%; that, in order to have made its gross passenger receipts from said line, at said reduced rates of fare, equal to its actual gross passenger receipts from the line in that year, it would have had to carry upon the line 9,010,286 passengers, or 1,778,204 passengers more than it did carry; that, assuming (as may fairly be done) that, at the rates sought to be established by the ordinance complained of in said bill

of complaint, 70% of the passengers upon said Euclid Avenue line would have ridden upon tickets, and but 30% would have paid cash for their rides, the receipts of said line in 1897, would have been:

From	2,169,625	passengers at 4c. each.....	$86,785.00
"	5,062,457	" at 7 for 25c.....	180,802.03
"	7,232,082	"	$267,587.03

And this would have been an average fare of 3.7 cents, and a reduction in income of $73,902.80, or 21.64%; that to have made the gross receipts of said line in 1897, at said reduced rates of fare, equal to the actual receipts of the line in that year said company
194 would have had to carry upon said line 9,229,455 passengers, or nearly 2,000,000 passengers more than it did carry; that in said year 1897, the company carried upon said Euclid Avenue line, in addition to the 7,232,082 passengers before mentioned, 1,313,375 additional passengers, who had been transferred from others of its lines to said Euclid Avenue line, and that it so carried them upon said Euclid Avenue line without charge; that, including the passengers so transferred, the company carried upon its Euclid Avenue line in 1897, 8,545,457 passengers, and that so including said transfers the rate of fare per passenger or per ride on said Euclid Avenue line in said year was less than four cents; that in 1897, the company transferred from its Euclid Avenue line to other lines operated by it about as many passengers as were transferred from other lines to the Euclid Avenue line, and carried them upon said other lines without additional fare; that is to say, for said $341,489.86 which it received on its Euclid Avenue line in 1897, it furnished eight and a half million rides, at an average rate per ride of four cents, the rate of cash fare named in said ordinance.

Affiant further says that the Wade Park Avenue line of the East Cleveland Railroad Company, to which it is claimed the ordinance complained of applies, was, shortly after the organization of the Cleveland Electric Railway Company, joined to one of the Pearl Street and Brooklyn lines of said Cleveland Electric Railway Company, which line had been formerly operated by the Brooklyn Street Railroad Company, and said Wade Park Avenue line and Pearl Street line were thereafter operated together as one line until the summer of 1898, when the Wade Park Avenue line was coupled to the Broadway line of the Cleveland Electric Railway Company, since which time said Wade Park Avenue and Broadway lines have been operated together as one line; so that it is im-
195 possible to state exactly what would have been the receipts of said Wade Park Avenue line in 1897, or at any other time since the organization of the Cleveland Electric Railway Company, if it had been operated as it was operated by the East Cleveland Railroad Company.

He says, however, that, assuming that the receipts of said line would have increased in the same ratio as the receipts of the entire street-railway system of the company increased, then the receipts of the Wade Park Avenue line in 1897, would have been $117,633; and assuming that the average rate of fare on said line would have been the same as upon the entire street-railway system of the company namely, 4.78 cents, as stated in the bill of complaint, the number of passengers carried upon said line in 1897, would have been 2,460,940.

He further says that, assuming (as may fairly be done) that, at the rates sought to be established by the ordinance complained of in said bill of complaint, 70 % of the passengers upon said Wade Park Avenue line would have ridden upon tickets, and but 30 % would have paid cash for their rides, the receipts of said line in 1897, would have been:

From	738,282	passengers at 4c. each	.....	$29,531.28
"	1,722,658	" at 7 for 25c	.....	61,623.54
"	2,460,940	"	.....	$91,054.82

That this is a rate per passenger of 3.7 cents, and a reduction in receipts of $26,578.18, or 22.6 %; that to have made the gross receipts of said line in 1897, at said reduced rates of fare, equal to the actual receipts of the line in that year said company would have had to carry upon said line 3,179,270 passengers, or 718,330 passengers more than it did carry.

Affiant further says that the Cedar Avenue line of the East Cleveland Railroad Company, to which it is claimed the ordinance complained of applies, was shortly after the organization of the Cleveland Electric Railway Company, joined to the Jennings Avenue and Brooklyn lines of said Cleveland Electric Railway Company,
196 which line had been formerly operated by the South Side Street Railroad Company, and said Cedar Avenue line and Jennings Avenue line were operated together as one line, and have ever since been so operated; so that it is impossible to state exactly what would have been the receipts of said Cedar Avenue line in 1897, or at any other time since the organization of the Cleveland Electric Railway Company, if it had been operated as it was operated by the East Cleveland Railroad Company.

He says, however, that assuming that the receipts of said line would have increased in the same ratio as the receipts of the entire street railway system of the company increased, then the receipts of the Cedar Avenue line in 1897, would have been $176,455; and assuming that the average rate of fare on said line would have been the same as upon the entire street railway system of the company, namely, 4.78 cents, as stated in the bill of complaint, the number of passengers carried upon said line in 1897, would have been 3,691,527.

He further says that, assuming (as may fai-ly be done) that, at the rates sought to be established by the ordinance complained of in said bill of complaint, 70% of the passengers upon said Cedar Avenue line would have ridden upon tickets, and but 30% would have paid cash for their rides, the receipts of said line in 1897, would have been:

From	1,107,458	passengers at 4c. each.....	$44,298.32
"	2,584,069	" at 7 for 25c.....	92,288.18
"	3,691,527	"	$136,586.50

That this is a reduction in receipts of $39,868.50, or 22.6%, and an average rate of fare of 3.7 cents; that to have made the gross receipts of said line in 1897, at said reduced rates of fare, equal to the actual receipts of the line in that year said company would have had to carry upon said line 4,769,054 passengers, or 1,077,527 passengers more than it did carry.

197 Affiant further says that, upon the foregoing basis, the company carried upon said three lines in 1897, 13,384,549 passengers from whom it received $635,577.86, or 4.75 cents each; that, assuming that the ratio of cash passengers to ticket passengers upon said three lines was the same as upon the entire system of the company, the average rate of fare would have been, as stated in the bill of complaint, 3.8 cents per passenger if said ordinance of October 17, 1898, had been in force, and that, at this rate of fare, its receipts from said 13,384,549 passengers would have been but $508,632.86, or $126,945 less than they were at existing rates of fare—a reduction of about twenty per cent. in its gross receipts from said three lines; that, assuming that, at the rates of fare sought to be fixed by said ordinance, but three tenths of the said passengers would have paid cash for their rides, the other seven tenths riding upon tickets at the rate of seven for twenty-five cents, the company's receipts from said three lines would have been but $495,228.31, or $140,349.55 less than they were at current rates of fare—a reduction of twenty-two per cent.; that, to have made the gross receipts from said three lines in 1897, at the proposed rates of fare, equal the actual receipts, the company would have had to carry upon said lines nearly 30% more passengers, which it could not have done without a large increase in the equipment and operating expenses of said lines.

Affiant further says that, even if it be true (which he does not admit) that the receipts of said lines, or any of them, at said lower rates of fare, would have equalled the actual receipts of the company from said lines in 1897, the larger number of passengers which the company would have been required to carry would have necessitated the installation of additional costly machinery in its power-houses, the purchase of additional cars and motors, the employment of many additional men, and an increase of operating expenses

198 in nearly all departments of the company's business.

Affiant further says that if the number of persons taking

passage upon said lines would, at said lower rates of fare, have been greater than at the rates of fare which the company in fact charged and collected (which, without free transfers from said lines he does not believe would have been the case), yet (except as to the Wade Park Ave. line) the additional passengers would have been drawn from said company's other lines, the receipts from which would have been correspondingly reduced; so that the effect upon the company's gross receipts from its entire street-railway system would have been as before stated.

Affiant further says that, while the ordinance complained of applies to a part of complainant's lines only, the lines to which he understands the city claims it is applicable (except said Wade Park Avenue line, considered as a separate and independent line) are among the company's most profitable lines, and that it would, in his opinion, be impossible for the company to operate even these lines at a reasonable profit, in a manner satisfactory to the public, at the rates of fare sought to be fixed by said ordinance, and to give to its passengers the advantages of free transfer from one line to another which it is now affording.

HENRY J. DAVIES.

STATE OF OHIO, *Cuyahoga County*, } ss:

Sworn to before me, and subscribed in my presence by said Henry J. Davies, this twenty-second day of December, 1898.

[SEAL.]

WM. J. MEAD,
Notary Public.

199 Endorsements on affidavit of Henry J. Davies: 5840. The Cleveland Electric Railway Co., *vs.* The City of Cleveland. Affidavit of Henry J. Davies. Filed Dec. 22, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Affidavit of Henry A. Everett.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Affidavit of Henry A. Everett.

STATE OF OHIO, *Cuyahoga County*, } ss:

Henry A. Everett, being duly sworn, says that for many years prior to the consolidation of the East Cleveland Railroad Company with certain other companies in 1893, he was identified with the management of the said East Cleveland Railroad Company,

during a number of years being one of the executive officers, and that he was and is entirely familiar with the operation of said railway and the rates of fare which it was charging at different times under various ordinances.

Affiant further says that at the time of the passage of the ordinance of September 15, 1879, granting a renewal of franchise
200 to the East Cleveland Railroad Company on the Euclid Avenue line as far east as Willson avenue, the said company was operating a line from the intersection of Superior and Water streets to the easterly limit of the city on Euclid avenue, such operation being under various grants, partly from the city council, partly from the county commissioners and partly from the council of the former village of East Cleveland, and that its grants for that portion of its line easterly from Willson avenue did not expire for a long period of time subsequent to 1879. At that time east of Willson avenue there was a single track; that at said time said East Cleveland Railroad Company had the right to charge passengers one fare from Water street to Willson avenue, another fare from Willson avenue to Fairmount street, and still another fare of three cents from Fairmount street to the city limit, and the company was, in fact, charging two fares at that time, namely, one fare between Water street and Willson avenue and a second fare from Willson avenue easterly to the city limit. After the passage of the ordinance of September 15, 1879, the company operated only a part of its cars as through cars, many of said cars running only to Willson avenue; and shortly before March 15, 1886, the city attempted to require the company to give transfer checks at Willson avenue to those persons who had paid fare to that point, which attempt was resisted by the company and was not successful.

The foregoing was the situation at the time of the passage of the ordinance of March 15, 1886, providing for a double track street railroad instead of a single track and requiring the company to do certain paving and the operation of through cars for one fare.

Affiant further says that in 1893, at the time of the consolidation of the different companies forming the complainant company, he
201 was president of the East Cleveland Railroad Company and entirely familiar with the operation and rates of fare which were at that time being charged by each of the constituent companies forming said consolidated company, and that up to the time of said consolidation, many years prior thereto, each of said companies was charging and receiving a cash fare of five cents over each of its routes.

Further affiant saith not.

HENRY A. EVERETT.

Sworn to and subscribed before me by the said Henry A. Everett this 20th day of December, A. D. 1898.

WM. J. MEAD,
Notary Public.

[SEAL.]

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Endorsements on affidavit of Henry A. Everett: No. 5840. The Cleveland Electric Railway Company, complainant, *vs.* City of Cleveland, defendant. Affidavit of Henry A. Everett. Filed Dec. 22, 1898. Irvin Belford, clerk U. S. circuit court, N. D. O. Squire, Sanders & Dempsey.

202 *Hearing on Rule in Progress.*

October Term, A. D. 1898, to-wit, December 22, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RAILWAY CO.
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

This day this cause came on to be heard on the rule to show cause why a temporary injunction should not issue herein, and the court having heard a part of the argument of counsel and the hour of adjournment having arrived, the further hearing was continued until tomorrow morning at 10 o'clock.

Hearing on Rule in Progress.

October Term, A. D. 1898, to-wit, December 23, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

This day this cause again came on to be heard on the rule to show cause why a temporary injunction should not issue herein, and the court having heard the further argument of counsel but not the conclusion thereof, and the hour of adjournment having arrived, this cause was continued until tomorrow morning at 10 o'clock.

Order of Submission.

October Term, A. D. 1898, to-wit, December 24, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

This day this cause came on again to be heard on the rule to show cause why a temporary injunction should not issue herein,
203 and the court having heard the arguments of counsel concluded, took the same under advisement.

Replication.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, vs. THE CITY OF CLEVELAND, Defendant. | No. 5840. In Equity. Replication to Answer.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereto, says that it will aver, maintain and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto; and that said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by repliant without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

204 Endorsements on replication: No. 5840. The Cleveland Electric Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Replication. Filed Jan. 21, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, att'ys for compl't.

Order of Continuance.

October Term, A. D. 1898, to-wit, February 6, 1899.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting under designation, and Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO. vs. THE CITY OF CLEVELAND. } No. 5840. Chancery.

This cause is continued to the next term of this court.

Order of Continuance.

February Term, A. D. 1899, to-wit, April 3rd, 1899.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELEC. RY. CO.
vs.
THE CITY OF CLEVELAND. } No. 5840. Chancery.

This cause is continued to the next term of this court.

205 *Opinion of the Court.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY
v.
THE CITY OF CLEVELAND. } # 5839. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
v.
THE CITY OF CLEVELAND. } # 5840. Equity.

Opinion of the court.

RICKS, *J.*:

The constitution of Ohio has empowered the legislature to confer upon the city of Cleveland the authority to operate lines of railway through its streets. Acting under this delegated power, as expressed in the Revised Statutes, section- 2501, *et sub.*, and 3437, *et sub.*, the city council, from time to time, has made grants to the street railroads conferring privileges upon them, and, at the same time, prescribing the terms and conditions under which such lines should be located and operated.

Among the powers so vested in the city was the right to prescribe the rate of fare to be collected during the life of each grant. The city, acting under this general authority so conferred, passed ordinances at different times pertaining to the street railways, which make a printed volume, and are in evidence before the court. These ordinances, granting, sometimes original, and sometimes ad-
206 ditional, authority, were accepted by the street railway companies; and these acceptances, on the one side, and grants made with conditions on the other, became a contract between the

parties, which could not be annulled or amended without the consent of both parties.

St. R. R. Co. *v.* Smith, *et al.*, 29 O. S. 292;
R. R. Co. *v.* Village of Carthage, 36 O. S., 634;
City of Columbus *v.* St. R. R. Co., 45 O. S., 104;
City Ry. Co. *v.* St. R. R. Co., 166 U. S., 557;
Chicago *v.* Sheldon, 9 Wall., 50;
New Orleans Water Co. *v.* Rivers, 115 U. S., 634.

These ordinances, so moulded into contracts under the legislative power hereinbefore referred to, are, in effect, laws of the State of Ohio, and therefore are within the inhibition of the fourteenth amendment to the Constitution of the United States, which is directed quite as pointedly to the legislative power of the State or municipality as to the executive or judicial; so that the obligations of contracts by legislation are protected by the Federal Constitution, which prohibits a State from passing any law impairing the obligations of contracts, or the taking of property without due process of law. (City Ry. Co. *v.* Citizens' R. R. Co., 166 U. S., 562.)

This court has jurisdiction to afford the relief prayed for in these bills, and has authority to declare invalid the ordinances now sought to be enforced, if, as contended by the complainants, the ordinances involved do impair existing contract rights, in practical operation, deprive the complainants, respectively, of property, without due process of law.

In City Ry. Co. *v.* Citizens' R. R. Co., 166 U. S. 562, the court say: "All that is necessary to establish the jurisdiction of the court is to "show that the complainant had, or claimed in good faith to have, a "contract with the city which the latter had attempted to impair."

"Conceding that the legislature of the State alone had the right "to make such a grant, it may, as was observed in Wright *v.* Nagle,

"101 U. S. 792–794, exercise authority by direct legislation,
207 "or by agency duly established, having power for that pur-
"pose. The grant, when made, binds the public, and is, "directly or indirectly, the act of the State. The easement is a "legislative grant, whether made directly by the legislature itself, or "by any one of its properly constituted instrumentalities." See also, Saginaw Gas Light Co. *v.* Saginaw, 28 Fed. Rep. 529; Weston *v.* Charleston, 2 Pet. 461; New Orleans Water Co. *v.* Rivers, 115 U. S. 674.

That a bill in equity seeking a judicial decree declaring an ordinance which impairs the contract rights of the complainant, or takes from him or it property without due process of law, is a proper remedy, has been specifically determined by the Supreme Court. C. M. & St. P. Ry. *v.* Minnesota, 134 U. S. 460; Smythe *v.* Ames, 169 U. S. 466.

As the various ordinances in force when the council passed the so-called "low fare ordinances," in October, 1898, prescribed the rate of fare which the companies might charge during the life of

each grant, the city possessed no power to modify such grant as respects the rate of fare, unless such power of modification was reserved in the ordinance making the grant. The statutes of Ohio confer power upon municipalities to determine the conditions of the grant at the time it is made, including fixing the rates of fare to be charged, but no power to thereafter prescribe rates of fare. Where the grant itself fixes the rate of fare, a reserved right of regulation does not authorize a municipality, after the rate of fare has been so fixed, to modify or change it during the life of the grant. (Old Colony Trust Co. *v.* City of Atlanta, 83 Fed. Rep. 39.)

It is held by the superior court of Cincinnati, in Smith *v.* Cincinnati:—

"A general ordinance providing for the construction and operation of a street railway within the city limits, which provided that, on the acceptance by the existing companies of the terms of the ordinance, it shall thereupon be operative and binding as a
208 contract between the city and the company so accepting the same, and that the street railroad shall be guided, governed and regulated by the following conditions, and such lawful and reasonable restrictions as the council may thereafter pass, does not reserve to the council the right to abridge or destroy any of the contract rights of the company, but only to make and enforce proper and reasonable regulations as to the operation or construction of the routes."

It is apparent that, whether the ordinances of October 17, 1898, are valid and enforceable against the respective complainants, depends, in the first instance, upon the solution of the question whether the reservations in the ordinances of 1879, authorized the action taken by the council in passing these "low fare ordinances" in October, 1898.

If, subsequent to the passage of these ordinances of 1879, no other grants had been made prescribing rates of fare upon the lines referred to in the ordinances of 1879, the only question presented would be, whether the reserved right is now being exercised in a reasonable manner. It appears, however, that numerous other ordinances have been passed and accepted by each of the complainant companies relating to the same subject matter, viz: the rate of fare to be charged upon the same lines of railway referred to in the ordinance of 1879. It therefore becomes necessary to inquire how far, if at all, the contract rights of the parties have been changed by these subsequent ordinances.

The general principles to be followed in such an examination are well settled. In U. S. *v.* Tynen, 11 Wall. 92, the rule is stated as follows:—

"When there are two acts on the same subject, the rule is, to give effect to both, if possible, but, if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates, to the extent of the repugnancy, as a repeal of the first; and, even where two acts are not, in express terms, repugnant, yet if the

latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." See, also, Dist. of Columbia *v.* Hutton, 143 U. S. 18; U. S. *v.* Claflin, 97 U. S. 546.

And again, where parties, having entered into a written contract, thereafter make a second contract relating to the same sub-
209 ject, to the extent that the provisions of the second contract are inconsistent with those of the first, the last contract, and not the first, measures the obligations of the parties.

In Lawson's Rights and Remedies, vol. 5, sections 2569–2570, the rule is stated as follows:—

"One written contract, complete in itself, will be conclusively presumed to supersede another one made prior thereto in relation to the same subject matter. The re cission may be implied in some cases; thus, if an agreement be made between the same parties containing the same matter, in which the terms of the latter are inconsistent with those of the former, so that they cannot subsist together, the latter will be construed to discharge the former." See, also, Chrisman *v.* Hodge, 75 Mo. 413; Hargrave *v.* Conroy, 19 N. J. Eq. 281; McDonough *et al. v.* Cain, 75 Ind. 181; Howard *v.* Wilmington St. R. R. Co., 1 Gill (Md.) 311.

With these principles in mind, we proceed to inquire, as respects the Cleveland City Railway Company, whether the common council of Cleveland, in October, 1898, was authorized, under then existing contracts between it and the said company, to take action under the reservation in the ordinance to the Kinsman Street Railroad Company of 1879, and reduce fares, as was attempted to be done by the ordinance of which complaint is made in the bill.

The ordinance, by virtue of which this reserved right to reduce fares is claimed, was passed August 25, 1879, and entitled "An ordi-"nance granting a renewal of franchise to the Kinsman Street Rail-"road Company to reconstruct, maintain and operate its street rail-"road in and through certain streets of the city of Cleveland," and it authorized the Kinsman Street Railroad Company to construct, maintain and operate a double track street railroad from Water street to Madison avenue upon Kinsman street (now Woodland avenue) and by section 7 of this ordinance it was provided as follows:—

"Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare, as it may deem justifiable and expedient."

210 This ordinance, then, was a grant to the Kinsman Street Railroad Company, and related to the operation by such company and its successors from Water street to Madison avenue on Kinsman street, the name of the latter street having been subsequently changed to Woodland avenue.

It appears in evidence that the successor of the Kinsman Street Railroad Company was the Woodland Avenue Railway Company, and that from about 1880 to 1885, the Woodland Avenue Railway Company owned and operated this so-called Kinsman Street line. After the Woodland Avenue Railway Company acquired such line, to-wit: in 1883, an ordinance was passed by the council, and duly accepted by the company, by which the company was authorized to extend its tracks upon Woodland avenue upon certain terms and conditions expressed in the ordinance; and in said ordinance it was provided that its existing railway and this extension should thereafter be operated as an entire line, and that but one fare of five cents over its entire line, including said extension, should be charged. This ordinance of 1883, relates to the operation of the company's street railroad as well over the line referred to in the Kinsman Company ordinance of 1879, and contains no reservation of the right to thereafter increase or diminish the rate of fare.

In 1885, the Woodland Avenue Railway Company and the West Side Street Railroad Company consolidated. At the time of such consolidation, the West Side Street Railroad Company was operating a line of railroad chiefly upon the west side of the river, under a grant from the city of Cleveland expiring twenty-five years from July, 1883; and, under the terms of the grant, was authorized to charge a cash fare of five cents, the city having reserved no right to change such rate of fare during the period of the grant. The effect of the consolidation was to establish a new main line extend-
211 ing from the southeasterly to the westerly portion of the city and with reference to such consolidation the common council, on February 16, 1885, passed an ordinance entitled:—

"An ordinance to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company, and said companies, may be consolidated.

"SEC. 1. Be it ordained by the city council of the city of Cleveland that the consent of the city is hereby given to the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company, upon the following conditions: The said consolidated company to carry passengers through, without change of cars, by running of the cars through from the workhouse, on the line of the Woodland Avenue Railway Company, to a point on the West Side Street Railroad Company where Gordon avenue crosses Lorain street, and, when practicable in the judgment of the council to do likewise on the branches of the consolidated lines; and that, for a single fare from any point to any point on the lines or branches of the consolidated road, no greater charge than five cents shall be collected, and that tickets, at the rate of eleven for fifty cents, or twenty-two for one dollar, shall at all times be kept for sale on cars by conductors."

This ordinance, as appears in evidence, was duly accepted by the consolidated company, the Woodland Avenue & West Side Street Railroad Company, and it is to be observed that it had reference to and included the operation of cars as part of a through line upon that portion of Woodland avenue which is referred to in the grant to the Kinsman Street Railroad Company of 1879, and amounts to an agreement on the part of the Woodland Avenue & West Side Street Railroad Company that it will thereafter carry passengers over such entire route at a cash fare of five cents, and ticket fare by tickets sold at the rate of eleven for fifty cents, or twenty-two for one dollar.

It further appears that, in April, 1887, the Woodland Avenue & West Side Street Railroad Company accepted an ordinance passed by the city council relating to an additional track upon Franklin avenue, and that in such ordinance it is provided that the grant therein made should continue and terminate with the grant on the main line of said company, on the 10th day of February, 1908,
212 and that the grant was made upon the express condition that no increase of fare should be charged by said railway company on any part of its main line or on such extension; so that but one fare, not to exceed five cents, should be charged between any points on said company's main line or extension, and that said company should sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar.

This grant, by its terms, does not expire until the 10th day of February, 1908, and it requires the company to carry passengers at a cash fare of five cents during that period, over its entire main line; as well as its extension; and it also appears that part of the main line over which it was so required and agreed to carry at the rate of five cents cash fare was the line of railway operated on Woodland avenue, (formerly Kinsman street), under the grant made to the Kinsman Street Railroad Company in 1879.

Again, in August, 1887, an ordinance was passed and accepted by the Woodland Avenue & West Side Street Railroad Company relating to the further extension of its tracks on Kentucky street, and in this ordinance it is provided that the grant shall expire with the grant of the main line on February 10, 1908, and that it is made upon the condition, agreed to by the company, that no increase of fare shall be charged by said company on any part of its main line or extensions, and that but one fare, not to exceed five cents, should be charged between any point and any other point on said company's main line or extensions, and that tickets should be sold at eleven for fifty cents or twenty-two for one dollar. This grant has not yet expired, and the main line, in respect to which the company so agrees to operate at a cash fare of five cents, includes the line of railway operated under the grant to the Kinsman Street Railroad Company in 1879.

On June 20, 1892, the Woodland Avenue & West Side
213 Street Railroad Company accepted a further ordinance passed by the council, relating to an additional track upon Kinsman street, which ordinance imposed various additional obligations with respect to paving and repairing, and involved the expenditure of a considerable sum of money on the part of the company; and in this ordinance it is provided that it is granted upon the condition that the company shall charge but one fare between any points on said company's main line and extensions, and sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar; and that the grant shall terminate with the grant of the company's main line, on February 10, 1908. This ordinance is in full force, and is an agreement upon the part of the company to carry at the rate of fare stated, good for passage over its entire main line and extensions, including, as part of its main line, the line upon Woodland avenue, (formerly Kinsman street,) operated under the original grant to the Kinsman Street Railroad Company, in 1879.

It also appears, from an inspection of the ordinances, that in each instance in which new grants were made to these companies, new and valuable considerations passed to the city for the making of the same, by way of increased requirements for paving, and additional accommodations in the operation of cars.

It appears in the bill and evidence that the complainant, The Cleveland City Railway Company, was formed, on May 13, 1893, by a consolidation of the Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company. The last named company, at that time, owned and operated lines of street railway upon Superior street by cable power, and upon St. Clair street by horse power; and was operating under grants of the city of Cleveland for a period of years which has not yet expired;
and the grants under which said cable company was oper-
214 ating authorized it and its successors, throughout the entire period of said grants, to charge a cash fare of five cents, there being in none of such grants any reservation of any right on the part of the city council to increase or diminish the rate of fare to be charged; and the company, at the time of the consolidation, was operating its road and charging a cash fare of five cents, as authorized in the ordinances of the city.

Under the consolidation, it was proposed to operate all the lines of the two constituent companies as an entire system, to operate through cars thereon, and permit passengers, for one fare of five cents, to ride from one end of said line, so consolidated, to the other; and, such being the purpose of the consolidation, on May 13, 1893, a communication was addressed to the common council of the city of Cleveland, as follows:—

"To the honorable council of the city of Cleveland, Ohio:

"The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company have agreed to

consolidate their two lines into the Cleveland City Railway Company; the consolidation to take effect June 1st, 1893. It is proposed, on June 1st, 1893, to immediately issue proper transfers, without extra charge, so that passengers on any line of the Woodland Avenue & West Side Street Railroad Company may be transferred to, and have a continuous passage upon, any line of the Cleveland City Cable Railway Company within the limits of the city of Cleveland, and also so that passengers upon any line of the Cleveland City Cable Railway Company may be transferred to, and have a continuous ride upon any line of the Woodland Avenue & West Side Street Railroad Company within the city of Cleveland; only one fare to be charged for such ride; and, as soon as the necessary improvements can be made, additional cross-town lines will be run, and only one fare charged for a continuous ride upon any additional lines within the city of Cleveland."

On May 15, 1893, the common council of the city passed a resolution approving and consenting to the consolidation of the companies, and the operation of cars, upon the terms stated in said communication.

It appears in evidence that, since the consolidation forming the said complainant company, The Cleveland City Railway Company,
it has continued the operation of its various lines of street
215 railway, as proposed in said communication; has continued
to charge the same cash fare of five cents for each passenger; has put in force the system of transfers contemplated in the council resolution; and has kept on sale tickets at the rate of eleven for fifty cents, or twenty-two for one dollar.

It also appears that no one of the grants under which the constituent companies which formed said complainant were authorized to operate their cars on their various lines of railway at a cash fare of five cents, and to sell tickets at the rate of eleven for fifty cents, has expired, but that each and all of said ordinances are in full force, and that none of said grants expire prior to the year 1908.

This being the situation, can the city successfully contend that the reservation in the ordinance of 1879, relating to the Kinsman Street Railroad Company, is now operative as respects the complainant, The Cleveland City Railway Company? Prior to 1885, the West Side Street Railroad Company was operating upon the west side of the Cuyahoga river. There was no interchange of traffic by transfer between it and the Woodland Avenue Railway Company, and passengers were obliged to pay a cash fare upon each road. The West Side Company was operating under a grant running for twenty-five years from February, 1883, entitling it to charge a cash fare of five cents. The consolidation of the Woodland Avenue and West Side Companies was made upon the condition that a new through line of street railroad should be established, so that, for a single fare, passengers should be carried from any point to any point on the lines or branches of the consolidated company. Upon the

taking effect of this consolidation, the relations of the two companies to the city were so far changed that, whereas the companies before had operated independent lines of railroad, and charged separate fares, a new through line was established, and a rate of fare fixed upon the entire line, of five cents.
216 The right to so charge five cents, and to carry at ticket fare at the rate specified, of course involved the right to charge such fare for the whole or any portion of the distance traveled on the line. It was competent for the companies and the city to at that time agree with respect to the terms and conditions, including the rate of fare, upon which this through line should be operated. The parties did make such contract, and one of the terms of the contract related to the rate of fare to be charged over the entire line; and part of the line with respect to which the rate of fare was so fixed in 1885, was the same line referred to in the Kinsman Street Railroad Company ordinance of 1879; that is to say, the city and the railway companies, in 1885, contracted with respect to the same subject matter referred to in the ordinance to the Kinsman Street Railroad Company in 1879. This ordinance of 1879, at the time, related solely to the rate of fare upon Kinsman street, operated as an independent line. The ordinance of 1885, is a contract with respect to the same subject matter, but establishes a rate of fare which should apply to the Kinsman Street line, not as an independent line, but as part and parcel of a direct through line from the southeasterly to the westerly part of the city. It is to be observed that no reservation is contained in this ordinance of any right to increase or diminish the rate of fare therein fixed, and the right to operate under this ordinance of 1885, was in full force in October, 1898. It must follow that no power existed in the council, in 1898, to change the rate of fare which had been so established by agreement between the parties.

Again, it is apparent that the existence of any such reservation is inconsistent with the right which is expressly granted by the ordinance of 1885. The consolidated company certainly acquired the right to carry to the end of the term at five cents over the
217 entire line or any portion thereof. This right could not co-exist with a right in the council to reduce the rate of fare during the period, as respects a portion of the line. By the contention of the city, the right to reduce could now only be made applicable to the Kinsman Street line and its extension. The city, however, contracted in 1885, that the company might carry over the Kinsman Street line, as part of the through line, at a cash fare of five cents; from which contract it necessarily follows that the entire contract relations of the company and the city, as respects the rate of fare to be charged on the Kinsman Street line, were merged in the contract of 1885, and the subsequent ordinances by which the Kinsman Street line ceased to be independent and became part and parcel of a through line, upon which a rate of fare for the full period of the grant was established.

By the subsequent ordinances of 1887 and 1892, running to the Woodland Avenue and West Side Companies, it is, as respects each of them, as before pointed out, expressly provided that their conditions as respects fare shall be applicable to the entire main line of the company, that the rate of fare shall continue to be five cents until the expiration of the several grants, and that the grants do not expire until the 10th day of February, 1908.

Again, in determining the contract rights of the complainant company, regard must also be had to its rights under the grants to the Cleveland City Cable Railway Company, which the present company acquired by the consolidation in 1893. The cable company had the right to operate, at a cash fare of five cents, its independent lines of railway. By virtue of the consolidation, its various lines became part of a great through system, operated by the consolidated company, whereby the public acquired the right of a continuous passage over the entire line for one fare of five cents, or
218 ticket fare at the rate of eleven tickets for fifty cents, or twenty-two for one dollar. The consolidated company, by virtue of such consolidation, acquired all the rights which had before pertained to the constituent companies with respect to the rates of fare which it was lawful to charge, except so far as it had voluntarily modified the same by entering into the consolidation; and it then became the duty of the company, and in the performance of such duty it acquired a corresponding right, to carry over its entire line, or any portion thereof, at a cash fare of five cents. A portion of the entire system which this company is now operating under these several grants from the city was formerly the line of the Kinsman Street Railroad Company, and the reservation under which the city now claims the right to reduce rates of fare upon the portion of the line which was formerly the Kinsman Street line was made with reference to, and can only have reference to, the operation of the Kinsman Street line as an independent line. Now the situation has so far changed that, by operation of law, and by express contract with the city of Cleveland, this original Kinsman Street line has become part and parcel of a through line, and, as respects the rates of fare which may be charged upon such through line, the city and the railway company have entered into various contracts expressly fixing the rates of fare to be charged over the through line or any part thereof.

If the ordinances, as respects rates of fare, which we have been examining, passed since 1879, are to be construed as statutes, it follows that, having been passed subsequent to the ordinance of 1879, relating to the Kinsman Street Railroad Company and relating to the same subject matter, they are so far inconsistent with the ordinance of 1879, as to operate as a repeal thereof.

If we treat these subsequent ordinances simply as contracts,
219 it is apparent that, having entered into a contract in 1879, the city has subsequently entered into various other contracts relating to the same subject, and that these later contracts are so far

inconsistent with the provisions of the original ordinance as that the rights of the parties must now be measured by their latest contract, and not by the original agreement.

Again, the inconvenience, if not the absolute impracticability, of enforcing the obligations of both the original ordinance of 1879, and the subsequent ordinances, in and of itself must well nigh force the conclusion that the rights of the parties must be gathered from these later, rather than from the original ordinance.

The complainant company confessedly has the right by contract to carry over its entire line, or any portion thereof, at a cash fare of five cents, and this it may do until its present grants expire in the year 1908; and what the city proposes, by the ordinances of 1898, is to compel the company, as respects a portion of this line, to carry at a cash fare of four cents. The right to carry at five cents over the whole line, or any portion thereof, is inconsistent with the obligation to carry for less than five cents over some portion of the through line.

It is apparent that the relations between the city of Cleveland and the complainant, as the successor of the various companies out of which it has been formed, have been so far changed by subsequent ordinances and contracts and consolidation, that the reservation contained in the ordinance of 1879, relating to the Kinsman Street Railroad Company, and authorizing the council to thereafter increase or diminish the rate of fare upon such line, is not and cannot now be made operative, legally, as against the complainant company, The Cleveland City Railway Company.

By reason of the various ordinances and contracts which
220 the complainant company and its predecessors have entered into with the city of Cleveland since the ordinance of 1879, the various railroad companies assumed different and much larger obligations in the carrying of passengers than were imposed upon the Kinsman Street Railroad Company by the ordinance of 1879. In almost every instance, the company agreed to carry passengers further, and, at the time of the consolidation of the Woodland Avenue and West Side Companies, the service which the railway company agreed to give to the citizens desiring to ride as passengers, it may fairly be said, was doubled, and the city and its citizens received from the railway company large and valuable concessions, which concessions formed a part of the consideration for the passage of the ordinances and the making of the contracts. No other conclusion can be reached than that the relations between the city of Cleveland and the complainant, as the successor of the various companies out of which it is formed, have been so far changed by the various contracts entered into since 1879, that the city is estopped from claiming that the reservation contained in the ordinance of 1879, can now be used to either increase or diminish the rate of fare upon a small portion of the line of the Cleveland City Railway Company.

As respects the complainant, The Cleveland Electric Railway

Company, a very similar question is presented by the ordinances before the court. The city contends for the validity of the "low fare ordinance" passed as respects this last named complainant, by virtue of an ordinance passed in 1879, granting a renewal of franchise to the East Cleveland Railroad Company. By this ordinance, set forth in the bill, the East Cleveland Railroad Company and its successors were authorized to reconstruct, maintain and operate a double track street railroad from Superior street east-
221 erly, through designated streets, including Euclid avenue, to Willson avenue; and, by section 6 of said ordinance, it was provided:

"Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of the line herein renewed, but said company may charge a reasonable compensation for carrying packages. The council, however, reserves the right to hereafter increase or diminish the rate of fare, as it may deem justifiable and expedient."

It appears by the allegations of the bill, and in proof, that, prior to the 15th day of September, 1879, the East Cleveland Railroad Company was operating a line of railway from the intersection of Superior and Water streets to the easterly limits of the city, on Euclid avenue, under various grants, some of which emanated from the city council, others from the county commissioners, and others from the authorities of the village of East Cleveland prior to its annexation to the city. At that time, there was but a single track east of Willson avenue upon Euclid avenue, and the company, under its grants, had the right to charge passengers one fare from Water street to Willson avenue, another from Willson avenue to Fairmount street, and still another from Fairmount street east; and was, in fact, charging two fares of five cents each, each way between Water street and the city limits.

This was the situation when the council passed the ordinance of September 15, 1879, containing the reservation with respect to fare, under which the city claims the right to pass and enforce the ordinance of October 17, 1898. After the passage of this ordinance, the company continued the operation of its line thereunder up to April 4, 1883, and, as it was permitted to do, charged one fare between Water street and Willson avenue, and an additional fare of five cents from Willson avenue easterly to the end of its line.

On April 4, 1883, the council passed an ordinance which was accepted by the company, granting it the right to build and operate an additional track on Euclid avenue, between Willson avenue and the easterly line of Fairmount street, making a double
222 track line. This ordinance contained a provision and reservation, as respects fare, in similar terms to that of the ordinance of 1879. Under this ordinance of 1883, the company agreed to carry passengers over its line as far east as the city limits for five cents. It did not make any agreement to run through cars, and for the next three years it did in fact only run a portion of its

cars through. It was under no obligation to give transfers at Willson avenue, and was in fact not giving such transfers.

It is alleged in the bill, and in proof by affidavit, that this arrangement and operation of the cars was unsatisfactory, both to the company and to its patrons, and, in March, 1886, (see Revised Ordinances, p. 826,) the council passed an ordinance entitled: "An "ordinance granting to the East Cleveland Railroad Company the "right to extend and operate its double track street railroad in Eu-"clid avenue between the easterly line of Fairmount street and the "easterly limits of the city." By section 3 of this ordinance, the company was required to pave fourteen feet, an obligation which did not pertain to its then existing contract with the city; and, by section 4 of the ordinance, the following provision is made, as respects the rate of fare to be charged by the East Cleveland Company over its entire line, which included the line referred to in the ordinances of 1879, and 1883:

"The rights as herein granted and conferred are upon the express condition, however, that said company shall charge and collect but one fare of not more than five cents for each passenger one way in either direction, between the easterly limits of the said city on Euclid avenue and the westerly terminus of said company's tracks at the intersection of Superior and Water streets; and upon the further condition that the said company shall run through cars over said line between said points last named in each direction as the public convenience and the opinion of the common council, by resolution expressed, may require."

Section 5 of this same ordinance provides:

"The rights herein granted to lay and operate a double track street railroad on Euclid avenue between Fairmount street and the easterly limits of the city, shall cease and determine on the 223 20th day of September, A. D. 1904, as provided for said company's tracks on Euclid avenue west of Fairmount street."

It is apparent from an inspection of this ordinance of 1886, in connection with the admitted circumstances surrounding its passage, that the council was then fixing and agreeing upon a rate of fare to be charged upon the entire line of the East Cleveland Railroad Company, and during the entire life of the franchise, which did not expire until 1904; and nowhere in this ordinance is contained any reservation in the city council to thereafter change the rate of fare therein prescribed. It also appears, in the making of this contract, that the city received additional consideration, namely: the obligation of the company to pave an additional space upon the street, and the requirement for the operation of through cars. In 1883, the reservation contained in the ordinance of 1879, had been repeated, in substance, in the ordinance of that date, but in 1886, the council, for the first time, legislates or contracts upon the subject of fares to be charged in connection with the operation of through cars and a

double track street railroad, and it entirely omits the reservation contained in the former ordinances.

This ordinance of 1886, was a contract, still in full force and effect. It, in express terms, prescribed the rate of fare which the company shall charge in the operation of its line upon Euclid avenue, and, in express terms, provides that the conditions and obligations of such ordinance shall remain in force until the year 1904; and it makes this obligation to so operate through cars and maintain a double track road, and to charge but five cents fare over the entire line, continue as long as, and terminate with, the ordinance of 1879; and this ordinance of 1879, so referred to, is the ordinance in which is contained the reservation upon which the city bases its contention as to the validity of the reduction of fare attempted to be made in October, 1898.

224 It is perfectly apparent that it could not have been in the minds of the parties contracting that the reservation of the right to regulate fare in the ordinance of 1879, could be operative after the express contract in relation to fare for the entire period of the grant, as made by the ordinance of 1886.

Again, the council, having in the ordinance of 1879, reserved the right to thereafter increase or diminish the rate of fare, did, in 1886, in the making of this contract, fix the rate of fare at five cents, to extend from the passage of the ordinance up to the expiration of the grant made in 1879; so that it may perhaps be fairly said that the ordinance of 1886, was an exercise of the reserved right of regulation contained in the ordinance of 1879. But, whether it be treated as an exercise of such right, or as the entering into of a new contract, it is plain that, after the passage and acceptance of the ordinance of 1886, there no longer remains in the city council a right to increase or diminish the rate of fare to be charged upon that line until the expiration of the grant of 1886, to-wit: the year 1904.

Again, in 1888, an ordinance was passed granting the East Cleveland Railroad Company the right to construct and operate its road by electricity on Euclid and Cedar avenues. In this ordinance, it is recited:

"Whereas, there is a desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit, and that an electric system be substituted for animal power for the movement of cars,

"Therefore, the East Cleveland Railroad Company is hereby granted permission, etc."

And, in section 6 of the ordinance, it is provided:—

"Nothing herein shall be so construed as to authorize any increase of present fare for transportation over any portion of said company's line."

It appears in evidence that the company, having accepted this ordinance, at the expense of a very large amount of money,

225 changed its construction as contemplated, and continued, after electricity was put in, to operate without any increase of fare.

It is apparent that the "present fare" referred to in the ordinance of 1888, must have had reference to the fare which the company was then charging, and as fixed in the ordinance of 1886, namely, a cash fare of five cents. In consideration of the company's so equipping its line with electricity, and so agreeing to carry at "present fare," this same ordinance granted an extension of franchise for twenty-five years from July 13, 1888. By virtue of this ordinance, read in connection with the ordinance of 1886, the company acquired thereby the right to operate its line for a period of twenty-five years from that date, at the then present rate of fare referred to in the ordinance, namely, a cash fare of five cents.

In 1889, an ordinance was passed, granting the East Cleveland Railroad Company the right to construct what is known as the Wade Park Avenue line, and, by section 4 of this ordinance, it is provided:

"Permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line or said extension, and but one fare, not exceeding five cents, or one of said company's tickets, shall entitle a passenger to transportation over the main line and extension, from the intersection of Lake and Water streets to the easterly limits of the city, or from the easterly limits of the city to the intersection of Lake and Water streets."

This provision as to fare covers a portion of the Euclid Avenue line, with respect to which it is claimed by the city that a reserved right exists to regulate fares under the ordinance of 1879, but the council, as in the ordinance of 1886, specifies the fare to be five cents, and, upon this Wade Park Avenue line, from Superior and Water streets to Case avenue, there could be no longer any right to reduce fare, as the extension is made upon the condition that the company will thereafter carry over the entire Wade Park Avenue line
226 at a cash fare of five cents, or a railroad company's ticket.

Prior to June 1, 1893, the Broadway & Newburgh Street Railroad Company, the Brookland Street Railroad Company and the South Side Street Railroad Company were corporations operating independent lines of railway in the city of Cleveland, each of them operating under contracts or grants from the city, and charging, as authorized in the ordinances permitting their operation, a cash fare of five cents. As to no one of these companies was there any right remaining in the city council to increase or diminish the rate of fare during the period of the several grants.

These companies, about June 1, 1893, consolidated with the East Cleveland Railroad Company, forming the complainant, The Cleveland Electric Railway Company. The city council consented to the terms of such consolidation under the following terms and conditions:—

"Only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by said constituent companies, and any line of any other of the said constituent companies within

the limits of the city of Cleveland, and passengers on any of such lines, paying one fare, shall be entitled, without additional or extra charge, to be transferred to any other of said lines, and have a continuous ride thereon, for said single fare."

But it is evident that the one fare here mentioned must have reference to the present fare then charged by the constituent companies, namely, a fare of five cents. It thus appears that, by virtue of the ordinance of 1886, the East Cleveland Railroad Company was authorized to operate its line and cars to the end of its term at a cash fare of five cents; that each of the constituent companies which formed the present complainant, The Cleveland Electric Railway Company, was also authorized, for a period of time which has not yet expired, to charge a cash fare of five cents; that these different lines have been merged by consolidation, and that under the
227 consolidation, the system is being operated as an entirety.

The portion of the Euclid Avenue line to which the reservation of the ordinance of 1879, had reference, as an independent line, has long since ceased to be such, and the relations of the consolidated company, (the complainant,) and the city, under these various grants, are so fixed as that, to admit the reserved power of regulation in the ordinance of 1879, to be now operative would be to impair the obligations of the several subsequent contracts in which the rate of fare is definitely fixed without reservation.

Also, as pointed out in the discussion of the question as to the other complainant, as a matter of practical railroad operation, it is difficult to see how the conferred rights of the parties could be worked out if effect is given to the alleged reserved power in the ordinance of 1879.

It is contended by counsel for the city that certain of the provisions as to rates of fare, claimed to constitute a new contract since the passage of the ordinance of 1879, are invalid, because in violation of section 2502 of the Revised Statutes, providing that, after a grant or renewal of a grant is made, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal.

It is questionable whether the right reserved to the city council to thereafter increase or diminish fare can fairly be said to be either an obligation or a liability of the railroad company within the meaning of this prohibition of the statutes; but, expressing no opinion on that subject, it is not true that the provisions of the section prohibit the city, after making an agreement or grant or renewal of a grant containing sundry provisions as to the rates of fare, from thereafter, upon sufficient consideration, modifying such contract.

This has been expressly held in the case of Clement v.
228 Cincinnati, 16 Western Law Bulletin, 355, and affirmed by the supreme court of the State in 19 Law Bulletin, 74. The court there held:

"The modification of a contract between the city and the owner of a street railroad route, made in good faith for the better accommodation of the public, is not void by virtue of section 2502 of the Revised Statutes, and the release of the grantee of such route from an obligation, although in consideration of, more rapid transit, involving greater expense and higher rate of fare, is permitted."

See also, Woodson *v.* Murdock, 22 Wall. 351; City of Cincinnati *v.* Cincinnati St. Ry. Co., 31 Weekly Law Bulletin, 308; City of Cincinnati *v.* Cincinnati St. Ry. Co., 2 *Nisi Prius* Reports, 298; also State, *ex rel.* Hadden, *v.* East Cleveland R. R. Co., 6 Circuit Court Reports, 318, affirmed by Supreme Court, 27 Bul. 64.

For nearly twenty years, as the result of municipal legislation, sometimes hostile, sometimes friendly, the rights and privileges of the public and the different street railroad companies of this city have been gradually moulded into a well defined code of street railway laws, every step of which has been stubbornly contended for by the respective parties to these suits. Conceding to each party all the rights and privileges won by this agitation, the court is convinced, after a thorough and painstaking investigation of all the ordinances, grants and evidence, that the complainants are entitled to the relief for which they pray in their bills of complaint, granting them a temporary injunction.

The court thinks it must be clear to every fair minded person, from the findings of fact filed with this opinion, that, to permit the ordinances of October, 1898, to be put into operation by the municipal authorities would clearly impair the present contract rights of the complainants, for which no adequate remedy exists at law.

The second contention of the complainants is that the ordinances in question prescribe a rate of fare so unreasonably low as to
229 deprive the complainants of their property without due process of law. In support of this contention, a large volume of testimony, in the shape of affidavits, has been filed by the defendant and the complainants. On the part of the complainants, these affidavits are offered to establish their contention that, taking into consideration the value of their railway systems, cost of construction, maintenance and operation, they could not carry passengers at the reduced rate proposed without loss, and that this loss would be so great as that, in time, it would deprive them of their property without due process of law. The court has examined these affidavits sufficiently to see that it would involve a laborious and expert accounting to decide this contention; and, having reached a conclusion on the first contention of the complainants, that the ordinances are invalid for the reasons hereinbefore stated, it is not necessary, for the purposes of this motion, to make any further examination of that claim.

It is, however, due the complainants to say that their testimony makes out a "*prima facie*" case, within the ruling announced in Smythe *v.* Ames, where the Supreme Court held:—

"A State enactment, or regulation made under the authority of a State enactment, establishing a rate for the transportation of persons or property by a railroad, that will not admit of the carrier earning such compensation as, under all the circumstances, is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment to the Constitution of the United States."

A preliminary injunction will issue, to remain in force until the final hearing of the cause, or until the further order of the court. Counsel will proceed to take their testimony for the final hearing, and the ninety days allowed by equity rule 69 will be apportioned between the parties.

230 Endorsements on opinion of the court: 5839–5840 United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company *vs.* The City of Cleveland. The Cleveland Electric Railway Company *vs.* The City of Cleveland. Opinion of the court. Filed May 16, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O.

231 In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } # 5839. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } # 5840. Equity.

Finding of Facts.

The complainants have instituted this suit to seek relief through a decree declaring void certain ordinances passed by the city of Cleveland in October, 1898, known as "low fare ordinances." By the provisions of these two ordinances, the city undertakes to compel each of the two complainants to carry passengers over certain designated portions of the routes operated by them at a cash fare of four cents, and to sell tickets good for one passage at the rate of seven tickets for twenty-five cents. Each of the complainants, in its bill of complaint, contends that the ordinances so requiring a reduction of fare are laws of the State of Ohio, and in impairment of their contract rights, and that the rate of fare sought to be established is so unreasonably low that, if put into practical operation, it would amount to the taking of the complainants' property without due process of law.

Upon the filing of the bills, temporary restraining orders were issued, restraining the defendant from putting these ordinances into operation; and, subsequently, the cases were heard by the
232 court upon an application, in each case, for a temporary injunction, and the cases have been fully and elaborately argued by the respective counsel, both orally and by brief.

As respects the Cleveland City Railway Company, the ordinance, the operation of which it is sought to enjoin, requires the company to operate what is known as the Kinsman Street line at the rate of fares therein prescribed; and, as to the Cleveland Electric Railway Company, the ordinance in question is made applicable to that which is known as the Euclid Avenue line, and all extensions thereof. Both of the companies, complainants herein, are operating under various ordinances passed in the common council of the city of Cleveland, prescribing the terms and conditions upon which the various railroad routes may be operated for stated periods of time. Both of the complainant companies, at the date of the passage of the ordinance in question, were operating under such grants from the city, none of which had expired.

A brief statement of the corporate history of each of these complainants, and of the various ordinances under which they were operating their lines of railway, is necessary to understand the precise question involved in this motion.

The complainant, The Cleveland City Railway Company, is a corporation duly organized under the laws of the State of Ohio, having a capital stock of $8,000,000, of which $7,600,000 have been issued, and a bonded indebtedness, secured by mortgage upon a portion of its railroad line, of $2,026,000, payable in eleven years, with 5% interest, payable semi-annually. This company was formed by the consolidation of two existing railway companies in the city of Cleveland, each of which owned and was operating lines of street railway under ordinances passed by the municipality, and, by the terms of such consolidation, and by the statutes of Ohio, became possessed of the rights, franchises and privileges theretofore possessed by each
233 of the constituent companies. The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company were the constituent companies entering into such consolidation.

The said The Woodland Avenue & West Side Street Railroad Company, one of the constituent companies forming such complainant, was organized in 1885, and was a consolidated company formed by the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company; and the said The Woodland Avenue Railway Company, which was consolidated, was the successor, by purchase, of the Kinsman Street Railroad Company, having become such about the year 1880. By the terms of the consolidation, in 1885, of the said The Woodland Avenue Railway Company and The West Side Street Railroad Company, said consolidated company, known as the Woodland Avenue & West Side

Street Railroad Company, became vested with all the rights and privileges of each of said constituent companies.

The Cleveland City Cable Railway Company was the successor and owner, by purchase, of all of the property and franchises of the St. Clair Street Railroad Company and the Superior Street Railroad Company, each of which companies was a corporation under the laws of the State of Ohio, owning and operating lines of street railway in the city of Cleveland under grants from the city.

By virtue of the consolidation of the Woodland Avenue & West Side Street Railroad Company and the said The Cleveland City Cable Railway Company, in 1893, the complainant company, The Cleveland City Railway Company, became vested with all of the rights, privileges and franchises of the said constituent companies above mentioned.

In 1885, when the Woodland Avenue & West Side Street Railroad Company was organized, the constituent companies before such consolidation were independent lines of railway, one
234 operating chiefly upon the west side of the Cuyahoga river and the other upon the east side, running to the northeasterly portion of the city. Each was acting under independent franchises and contracts with the city of Cleveland. There was no exchange of traffic by way of transfer, and each company was charging a fare of five cents over its line. At the time of this consolidation, the West Side Street Railroad Company had the right, by ordinance, to continue the operation of its road for twenty-five years from February, 1883, and to charge a cash fare of five cents for each passenger carried. The Woodland Avenue Railway Company was operating its line of road under several grants from the city; among others, a grant made in 1879, relating to the operation of cars from Water street, through Superior and Ontario streets and Woodland avenue, to Madison avenue. This grant provided, among other things, that the company should not charge more than five cents cash fare, and in said ordinance was reserved the right to the municipal council to thereafter increase or diminish the rate of fare as it might deem wise and expedient; this being the ordinance known as the Kinsman Street ordinance, and under which the defendant claims the right to put into operation the ordinance reducing the fare, set up in the complainant's bill.

In 1883, another ordinance was passed, granting the Woodland Avenue Railway Company the right to extend and construct its line of railway upon Woodland avenue from the crossing of the Cleveland & Pittsburgh Railroad Company's tracks to Corwin street, and, in this ordinance, provision was made for the operation of cars over the entire line, including the line referred to in the ordinance of 1879; and the company agreed that, during the continuance of said grant, it would charge but one fare of five cents over its entire line, including said extension.

In 1885, upon the consolidation forming the Woodland
235 Avenue & West Side Street Railroad Company, the city council passed an ordinance entitled "An ordinance to fix the

"terms and conditions upon which the railway tracks of the West "Side Street Railroad Company and the tracks of the Woodland "Avenue Railway Company and said companies may be consoli- "dated;" and in and by the said ordinance it is provided that "the said consolidated company to carry passengers through without change of cars, by the running of cars through from the workhouse, on the line of the Woodland Avenue Railway Company, to the point on the West Side Street railroad where Gordon avenue crosses Lorain street, and, when practicable, in the judgment of the council, to do likewise on the branches of the consolidated lines, and that for a single fare from any point to any point on the lines or branches of the consolidated road no greater charge than five cents shall be collected, and that tickets at the rate of eleven for fifty cents, or twenty-two for one dollar, shall at all times be kept for sale on the cars by the conductors."

This ordinance was duly accepted by the Woodland Avenue and West Side Street Railroad Company, and its successor, the complainant, has complied with the terms of said ordinance, which has not yet expired; and it also appears that the provision so fixing the rate of fare to be charged at five cents had reference to and included the operation of cars upon that portion of Woodland avenue referred to in the ordinance sought to be enjoined in the bill of complaint.

In April, 1887, the Woodland Avenue & West Side Street Railroad Company accepted an ordinance by the city of Cleveland relating to the construction of an additional track upon Franklin avenue, and in this ordinance it is provided that the grant made shall continue and terminate with the grant of the main line of said company on the 10th day of February, 1908, and that it is made upon the express condition that no increase of fare shall be charged by said railway company upon any part of its main line or on said extension, so that but one fare of not to exceed five cents shall be charged between any points on said company's main line or extensions, and that said company shall sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar. This ordinance
236 of 1887, is still in force, and part of the main line referred to, upon which it was so provided that a fare of not to exceed five cents should be charged is the line of railway formerly known as Kinsman street, and referred to in the ordinance the operation of which is sought to be enjoined herein.

In August, 1887, the city council passed an ordinance, which was duly accepted by the Woodland Avenue & West Side Street Railroad Company, relating to an extension of its tracks upon Waverly avenue, and this ordinance provided that no increase of fare should be charged by said company on any part of its main line, or on said extension; and that but one fare of not to exceed five cents should be charged between any points on said company's lines or extensions, and that said company should sell tickets on its cars as follows: Eleven tickets for fifty cents, or twenty-two tickets for one dollar.

This grant is still in force, and the main line upon which the rate of fare is so prescribed includes the line of railway upon Woodland avenue, referred to in the ordinance of October 17, 1898, set forth in complainant's bill.

In 1892, the council passed an ordinance, duly accepted by the Woodland Avenue & West Side Street Railroad Company, relating to an additional track upon Kinsman street, which ordinance required large expenditures of money by way of paving and repairs of pavements, and in said ordinance it was provided that the grant is made upon the conditions that the company shall charge but one fare between any points on said company's main line and extensions, and sell tickets at the rate of eleven for fifty cents, or twenty-two for one dollar, all rights under the grant to terminate on the 10th day of February, 1908. The main line referred to in this ordinance includes the Woodland Avenue line, in respect to which the council, by the ordinance of October 17, 1898, seeks to prescribe a lower rate of fare.

237 At appears from an inspection of the various ordinances that, in each instance where new rights were granted to the company, the city received as well new and valuable considerations by way of increased obligations in respect to paving, or the operation of through cars for the accommodation of the public, or the selling of tickets upon the cars.

Prior to May 13, 1883, the Cleveland City Cable Railway Company owned and operated lines of street railway upon Superior street by cable power, and lines upon St. Clair street by horse power; and the ordinance under which it was so operating authorized it, for a period of years which has not yet expired, to operate its lines, and upon each of them to charge a cash fare of not to exceed five cents. In May, 1893, at the time of the consolidation forming the Cleveland City Railway Company, the two companies entering into such consolidation addressed a communication to the city council notifying it of their agreement in that respect, and that, on June 1, 1893, it was proposed to operate the lines as an entire system, to issue proper transfers, so that a passenger on any line of the Woodland Avenue & West Side Street Railroad Company could be transferred to and have a continuous passage upon any line of the Cleveland City Cable Railway Company, and *vice versa;* that only one fare should be charged; and that it was proposed to also establish a cross-town line, and charge but one fare for a continuous ride upon any additional lines within the city of Cleveland. Upon the receipt of such communication, the common council, on May 10, 1893, passed a resolution approving the proposed consolidation upon the terms and conditions stated in such communication; and it appears that, since the first of June, 1893, The Cleveland City Railway Company, the complainant herein, has operated said various lines of street railway, charging a cash fare of five cents for each passenger, and

selling tickets good for passage as required by said sev-
238 eral ordinances, and with the system of transfers contemplated in said council resolution, and in all respects complied with the conditions of the various ordinances under which it is operating its railway system.

Such being the relations established by ordinance between the city of Cleveland and the complainant, on the 17th day of October, 1898, the city council passed an ordinance entitled "An ordinance to "provide for a diminution of fare under an ordinance granting a "renewal of franchises, to the Kinsman Street Company, and to "reconstruct, maintain and operate its street railroad in and through "certain streets of the city of Cleveland." This ordinance, after reciting the reservation contained in said ordinance of 1879, providing "the council, however, reserves to itself the right to here-"after increase or diminish the rate of fare as it may deem justifiable "and expedient," further recites that "the council now deems a "diminution of fare justifiable," and, by section 1 of the ordinance provides "that the rate of fare for a single continuous passage over "the lines and all extensions thereof operated under the aforesaid "grant to the Kinsman Street Railway Company be, and the same "is hereby, fixed at four cents, cash fare, over the whole or any part "thereof;" and, by section 2, the ordinance requires the company operating said line to keep on sale in its cars, when in operation, tickets good for a single continuous passage at the rate of seven tickets for twenty-five cents.

The contention of the Cleveland City Railway Company, and upon which it asks an injunction, is that the said ordinance of October 17, 1898, which so requires it to carry upon a portion of its line at a cash fare of four cents, and to sell tickets at the rate of seven for twenty-five cents, is in violation and contravention of the contract obligation existing between the said company and
239 the city of Cleveland, and impairs its contract rights in this: that whereas it is entitled, by virtue of the several ordinances hereinbefore set forth, to charge upon all of its said lines a cash fare of five cents, the provision of said ordinance requires it to accept a cash fare of four cents; and whereas it is entitled, as respects ticket fare, to sell tickets at the rate of eleven for fifty cents or twenty-two for one dollar, this ordinance requires it to sell tickets at the rate of seven for twenty-five cents; and this, the complainant claims, would be an impairment, by law of the State of Ohio, of its contract rights growing out of said ordinance and its acceptance thereof.

It is also contended that the practical effect of the ordinance would be to reduce the rate of fare to four cents for a cash fare, and 3 4/7 cents for a ticket fare; that experience in the operation of street railways has shown that where there is such a difference in amount between tickets and cash fare, as a matter of convenience and economy, at least 70% of passengers use tickets, so that, if said ordinance be put into operation, the complainant contends it would be obliged to carry about 70% of its passengers at the rate of 3 4/7 cents, and that

about 30% would pay the cash fare of four cents; whereby it claims that its gross receipts would be reduced more than one-fifth, while its operating expenses would remain the same, and that the practical operation of the ordinance would be to diminish its net receipts more than 50%, and, in its bill, the complainant gives a comparative statement of gross and net receipts for the year 1897, showing the number of passengers carried, the rate per passenger received under existing ordinances, and what its receipts would have been had the ordinance of October 17, 1898, been put in force upon its entire line; and, from this statement, it appears that its gross receipts would have been reduced $221,505.38, or something
240 more than 20%, and that the average rate of fare per passenger carried would have been 3.87 cents, and that, in order to have made the gross receipts equal to those under existing ordinances, it would have been obliged to carry, in 1897, 5,736,590 more passengers than it did in fact carry.

It is further contended and set forth in the bill that, had the ordinance in question been in operation in 1897, over the entire line, the company would have suffered a loss in income of $221,505.38,—more than 52.5% of its net income; and, for the same period of time, and assuming that 70% of passengers carried would have used tickets, the loss to the company would have been $259,971.59,—more than 61% of its net income. And the complainant contends that the losses which it alleges would result are reached in the statements given without including anything for interest charges, depreciation, nothing for dividends or interest on capital stock, and nothing by way of sinking fund, which it is alleged should be allowed by reason of the shortness of the franchises of the company; and the complainant contends that said reduction of fare would deprive it of the reasonable profits which it is entitled to derive from its property, and constitute a taking of its property without due process of law, in contravention of the Constitution of the United States.

The complainant, The Cleveland Electric Railway Company, is a corporation duly organized under the laws of the State of Ohio, having a capital stock of $12,000,000, substantially all of which is issued, and a bonded indebtedness secured by mortgage upon its property, aggregating about $3,750,000, and a floating indebtedness of about $250,000.

This company was formed by the consolidation of four existing railway companies in the city of Cleveland, each of which owned and was operating lines of street railway under ordinances passed by the municipality; and, by the terms of such consolidation, and by the statutes of Ohio, became possessed of the rights,
241 franchises and privileges theretofore possessed by each of the constituent companies. The constituent companies entering into such consolidation were the East Cleveland Railroad Company, the Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Rail-

road Company. The said The East Cleveland Railroad Company was a corporation which had been in existence, and operated lines of street railway in the city of Cleveland since about the year 1859, and at the time of said consolidation owned and was operating several lines of street railway in said city, namely, its Euclid Avenue line, extending from the business portion of the city on Bank street, through Superior street, Euclid avenue, Erie street, Prospect street, Case avenue and Euclid avenue to the city limits; its Garden Street line, its Cedar Avenue line, and its Wade Park Avenue line. That the aggregate mileage of the lines operated by said company was about forty miles, and each of said lines had been constructed, and was in operation, under grants from the city of Cleveland, and upon the faith of which the said company had so constructed its lines of railway, and in and by which said grants the city and said company, as authorized by the statutes of Ohio, had agreed as to the terms and conditions and the period of time for the operation by said company of its said lines of street railway.

That prior to September 15, 1879, the East Cleveland Railroad Company was operating its main line of railway from the intersection of Superior and Water streets to the easterly limits of the city on Euclid avenue, under various separate grants, some from the city council, some granted by the county commissioners before the territory affected thereby became a part of the city of Cleveland, and still other grants from the authorities of the former village of East Cleveland; and the contract rights of the company for the operation of its road easterly of Willson avenue contained few restric-
242 tions, and none respecting the rates of fare to be charged, and extended for a period of nearly twenty years; and at that time, east of Willson avenue upon Euclid avenue there was but a single track, and under contracts and agreements then in force between the company and the public authorities, it had the right to charge passengers one fare from Water street to Willson avenue, another fare from Willson avenue to Fairmount street, and still another fare from Fairmount street to the city limits; and it was, in fact, at that time, charging passengers two fares between Water and Superior streets and the city limits. That, in this situation, the said The East Cleveland Railroad Company and the city entered into a new contract, providing for the renewal of the grant to the said The East Cleveland Railroad Company for the construction, maintenance and operation of a double track street railway over a portion of the line then operated by said company from Superior and Water streets, through Superior street, around the public square to Euclid avenue; through said avenue to Erie street; thence to Prospect street; thence to Case avenue; thence to Euclid avenue, and along said Euclid avenue to Willson avenue; and said ordinance imposed new conditions as respects paving to be done by said company, removal of snow and ice from the tracks, and other similar provisions; and in and by section 6 of said ordinance it was provided that said company should not charge more than five cents each way for a passenger

over the whole or any part of the line therein renewed; that said company might charge a reasonable compensation for carrying packages, and that the council reserved to itself the right to thereafter increase or diminish the rate of fare, as it might deem justifiable or expedient; and under and by the terms of said ordinance, which was to remain in force for the period of twenty-five years from the 20th day of September, 1879,

the said company reconstructed its tracks between Su-

243 perior and Water streets and Willson avenue, as aforesaid, and thereafter, up to April, 1883, charged, as it was permitted to do by said ordinance, one fare of five cents between Superior and Water streets and Willson avenue, and an additional fare of five cents from Willson avenue eastwardly to the end of its line. That about April 4, 1883, said company entered into a new contract with said city, by ordinance duly passed and accepted by the company, by which, upon certain terms and conditions, it was granted the right to extend and to build an additional track, and operate a double track line upon Euclid avenue from Willson avenue to Fairmount street; and in said ordinance and grant said company agreed that it would charge but one fare of not more than five cents between the westerly terminus of the company's road upon Superior street and the easterly terminus of its line, and that the rights granted should expire on the twentieth day of September, 1904; and in and by said contract it was provided that the council reserved to itself the right to thereafter increase or diminish the rate of fare between the westerly end of said company's line on Superior street and the city limits, as it might deem justifiable and expedient.

That upon the making of the last mentioned contract, the relations between the city and the East Cleveland Railroad Company were so far changed that the company agreed to carry passengers over its lines as far easterly as the city limits for five cents for each passenger, but it had not agreed, and was under no obligation, to run all its cars through, and was, in fact, operating only a portion of its cars as through cars, and was under no obligation to and was not transferring passengers who desired to go east of Willson avenue who had taken passage upon a car which did not go beyond that point; that such arrangement and operation were unsatisfactory, both to the

city and to the company, and, in March, 1886, a new contract

244 was entered into between the city and the railroad company, by ordinance duly passed and accepted by the railroad company, whereby it became obligated to construct and operate a double track railroad in Euclid avenue between the easterly line of Fairmount street and the easterly limits of the city, such territory having theretofore been occupied by a single track, thereby making its entire Euclid Avenue line a double track street railroad; and in said ordinance it also agreed to pave between the rails of each track, together with the spaces between the rails, and to keep certain portions of the pavement in good repair; each and all of which obligations were in addition to those existing under former contracts

between the railroad company and the city. And the complainant claims that, in and by said ordinance, an entirely new contract and agreement, superseding all contracts prior thereto, was made with the city by the said railroad company with respect to the rates of fare which it should charge over its said line so to be made into a double track through line from Superior and Water streets to the easterly limits of the city upon Euclid avenue, the agreement between the city and the railroad company with respect to the fare thereafter to be charged being as follows: That said company should operate the whole of said track as a through line, with through cars, and should charge and collect but one fare of not more than five cents for each passenger one way in either direction, between the easterly limits of the city on Euclid avenue and the westerly terminus of said company's tracks at the intersection of Superior and Water streets; and that the company should run through cars over said line between the points last named in either direction, as the public convenience, in the opinion of the common council, by resolution expressed, should require; and that the contract so made should be in force until the 20th day of September, 1904, which contract, having been so duly expressed
245 by ordinance and accepted by said The East Cleveland Railroad Company, the complainant, The Cleveland Electric Railway Company, claims became a valid contract between the said The East Cleveland Railroad Company and the city of Cleveland, by which said company agreed, in consideration of the grants therein made to it, to make the necessary expenditures contemplated in said ordinance with respect to the reconstruction of its tracks, and assumed and agreed to perform additional obligations in respect to paving, and agreed that it would operate said road in accordance with the terms of said ordinance until the 20th day of September, 1904; and that, during such time, it would carry passengers at the rate of fare so fixed in said ordinance, to-wit: five cents for each passenger one way, in either direction, over said entire line, and, in pursuance of said contract, and in reliance thereon, the said company proceeded to in all respects comply with the conditions of said ordinance, and began the operation of a through line of cars in accordance with the terms thereof, and said company, and said complainant, its successors, have ever since said time fully complied with the terms and conditions of said last mentioned ordinance, and are now complying therewith, although said company thereafter voluntarily began the sale of tickets good for passage at a less rate than it was authorized to charge in said ordinance, towit: at the rate of eleven tickets for fifty cents.

That, prior to July, 1888, the line of railway of the said East Cleveland Railroad Company had been operated by horse power; that, at that date, such progress had been made in perfecting the system of propelling cars by electric motors, that the company was willing to incur the necessary expense of equipping certain of its lines with electricity, and thereupon the said company and said city

entered into a still further contract by ordinance, duly passed
246 and accepted, providing for the equipment and operation of said company's Euclid Avenue and Cedar Avenue lines by electricity, and in said ordinance and contract it was provided that the privilege of constructing the electric system and the operation of said lines thereby was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure the same, and that the right to operate said line after the expenditure of said large sum of money so necessary for its equipment should be and remain in force for the period of twenty-five years from and after the passage of said ordinance both upon the main line and what is known as the Cedar Avenue line of said company, and provided that nothing in the ordinance should be construed to authorize any increase of present fare for transportation over any part of said company's lines; and your orator shows and alleges that, at the time of the passage of said ordinance, and its acceptance by said company, the rate of fare therein referred to, which was not to be increased, was, as hereinbefore set forth, five cents for each and every passenger carried in either direction over said lines, and it was in terms provided in said ordinance that its acceptance should be deemed an agreement with the said company by which it agreed to perform all and singular the matters and things therein agreed by it to be performed. The council were also given permission in and by said contract to require the company thereafter to equip the entire length of its main line and Cedar Avenue line with electricity; and thereafter, in reliance upon its said contract, and the performance thereof by the city, said company proceeded, at the expense of many hundred- of thousands of dollars, to equip its said lines with electricity in pursuance of the terms of said ordinance.

That thereafter the said The East Cleveland Railroad Company entered into another contract with the city of Cleveland, by
247 ordinance passed and accepted, by which it was given authority to construct and operate the lines known as the Wade Park Avenue line, the company agreeing, in consideration thereof, to do certain additional paving, and to submit to various other requirements as in said ordinance expressed, and with respect to the rate of fare to be charged by said company, said ordinance and contract provided that no increase of fare should be charged by said company on any part of its main line or said extension, and that one fare, not to exceed five cents, or one of said company's tickets, should entitle a passenger to transportation over the main line and extension, from the intersection of Lake and Water streets to the easterly limits of the city. That, in compliance with the terms of said ordinance and contract, said East Cleveland Company constructed and placed in operation the said Wade Park Avenue line at great expense, and, since said time, said line has been operated at the rates of fare therein fixed, and, in all respects, the conditions of said ordinance complied with.

That, prior to May, 1893, the said the East Cleveland Railroad

Company, the Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company, were engaged in the operation of their respective lines of road in various and different parts of the city, and as authorized in various contract grants under which they had constructed their said lines of railway and were operating the same, each and all of said constituent companies were charging a cash fare of five cents, and that their right so to do was fixed by the terms of their respective contracts and agreements with the city, and complainant alleges that there was not, at any time, as respects any one of said constituent companies, power in the common council of the city to in any manner compel said companies, or any one of them, during the existence of their respective grants, to reduce the
248 cash fare to be charged by the said companies, or either one of them, below a cash fare of five cents.

That each of said constituent companies operated its line as an independent line; that no system of transfers, (except between the South Side and Brooklyn lines,) from the line of one of said roads to the lines of the others was in force, so that a passenger, having occasion to use more than one of said lines, was obliged to pay two fares of five cents each, and that each and all of the grants under which said companies were so operating under the rights aforesaid prior to the 29th day of May, 1893, are still in force and effect.

That about April 11, 1893, the said constituent companies entered into an agreement of consolidation, in conformity with the statutes of Ohio, and formed and organized the complainant, The Cleveland Electric Railway Company, as a consolidated company, by virtue of which consolidation the complainant, The Cleveland Electric Railway Company, at once became possessed of and vested with all and singular the property, rights, franchises and privileges of each and all of said constituent companies, and such consolidation being effected, and complainants intending to operate said lines as one entire system, and to give to the public in the city, the privilege of riding over said system by a continuous passage for one fare, the complainant applied to the common council of the city of Cleveland for its consent and approval of the terms of said consolidation, so far as they related to the maintenance and operation of said various lines and rates of fare which should be charged by said complainant, and, upon May 29, 1893, said city council duly adopted a resolution consenting to said consolidation, and providing, among other things, as follows:

"That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said con-
249 stituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any such lines paying one fare shall be entitled, without additional or extra charge, to be transferred to any other of

said lines, and having one continuous ride thereon for said single fare."

Said resolution further provided that the Cleveland Electric Railway Company should file with the city clerk a written acceptance of the terms of said resolution within ten days from the time of its adoption, which written acceptance was duly filed, as required by the terms of said resolution, on the date of its passage,—May 29, 1893; and the complainant has, ever since the adoption of said resolution, continued to operate said various lines of railway, and to charge only the same cash fare of five cents for each passenger, in strict compliance with each of the different contracts which each of said constituent companies had with the city, and which are still in full force. And the complainant, The Cleveland Electric Railway Company, adopted and put in force the system of transfers contemplated in said council resolutions, and has, although not required so to do, by the grants and contracts of the East Cleveland Railroad Company, kept on sale, and accepted for passage, tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar. That no one of the grants or contracts aforesaid under which said constituent companies which formed the complainant were authorized to operate their various lines of street railway and to charge a cash fare of five cents for each passenger carried thereon, has expired, but all of said grants are in full force and effect.

That, in December, 1893, the complainant duly accepted an ordinance of the city authorizing it to extend its double track railway on Prospect street from Erie street to Ontario street, in which ordinance it was provided that the complainant, with respect to all lines of railway which it was operating, should comply with the terms and conditions of said resolution of the city council,
250 passed May 29, 1893, approving said terms of consolidation, and that it should, upon each of said lines, comply with the conditions of said last mentioned ordinance; that said grant so made has not yet expired, and that no one of the grants under which complainant is operating its lines of street railway expire before the year 1910.

Such being the relations established by ordinance between the city of Cleveland and the complainant, The Cleveland Electric Railway Company, on the 17th day of October, 1898, the city council passed an ordinance entitled "An ordinance to provide for diminution of "the rate of fare under section 6 of an ordinance passed September "15, 1879, entitled, 'An ordinance granting a renewal of franchise to "the East Cleveland Railroad Company to reconstruct, maintain and "'operate its railroad in and through certain streets of the city of "'Cleveland.'" This ordinance, after reciting the reservation contained in said ordinance of 1879, providing "The council, however, "reserves to itself the right to hereafter increase or diminish the rate "of fare as it may deem justifiable and expedient," further recites that the "council does not deem it justifiable and expedient to dimin-

"ish the rate of fare," and, by section 1 of the ordinance, provides: "That the rate of fare for a single continuous passage over the lines "and all extensions thereof operated under the aforesaid grant to "the said East Cleveland Railroad Company be, and is hereby, fixed "at four cents cash fare over the whole or any part thereof;" and, by section 2, the ordinance requires the company operating such line to keep on sale on its cars, when in operation, tickets good for a single continuous passage at the rate of seven tickets for twenty-five cents.

The complainant, The Cleveland Electric Railway Company, makes substantially the same contention with respect to said ordinance last mentioned being in contravention of its contract obligations with the city of Cleveland with respect to cash fares and
251 ticket fares as provided therein, and impairment of contract rights, and also with respect to the practical effect of the ordinance if put in operation, as to diminishing receipts, etc., as claimed by the complainant, The Cleveland City Railway Company, hereinbefore referred to, except as to the comparative statement of gross receipts given in the bill of the Cleveland Electric Railway Company for the years 1896 and 1897, from which it appears that its gross receipts would have been reduced, in 1897, $334,890.67, or something more than 20%, and that the average rate of fare per passenger would have been 3.80 cents, and that, in order to have made the gross receipts equal to those under existing ordinances, it would have been obliged to carry, in 1897, 3,812,912 more passengers than it did in fact carry.

It further contends and set forth in its bill that, had the ordinance in question been in operation in 1897, over the entire line, the company would have suffered a loss of income of $380,346.18,—more than 64% of its net income,—and the complainant contends that the losses which it alleges would result are reached in the statements given without including anything for interest charges, depreciation, nothing for dividends or interest on the capital stock, and nothing by way of sinking fund, which it alleges should be allowed by reason of the shortness of the franchises of the company; and the complainant contends that said reduction of fare would deprive it of the reasonable profits which it is entitled to derive from its property, and constitute a taking of its property without due process of law, in contravention of the Constitution of the United States.

AUGUSTUS J. RICKS,
U. S. Judge, &c.

252 Endorsements on finding of facts: 5839–5840. United States circuit court, northern district of Ohio, eastern division. The Cleveland City Railway Company *vs.* The City of Cleveland. The Cleveland Electric Railway Company, *vs.* The City of Cleveland. Finding of facts. Filed May 16, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O.

253 *Order Granting Temporary Injunction.*

April Term, A. D. 1899, to-wit, May 22nd, 1899.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

254 THE CLEVELAND ELECTRIC RAILWAY Company
vs.
THE CITY OF CLEVELAND. } # 5840. In Equity. Order of Injunction.

Upon motion of complainant, the affidavits of the respective parties, and arguments of counsel, the motion of complainant for a temporary injunction, as prayed for in the bill of complaint, is granted; and, until the further order of the court, it is ordered that the City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys and employees, representatives and departments of said city and their respective agents, representatives, and employees, and the director of law of said city and his associates and assistants and agents, and their respective successors in office, be enjoined, restrained and prohibited from putting into effect the ordinance in the bill of complaint described, to-wit: an ordinance entitled: "An ordinance to provide for a diminution of the rate of fare under section 6 of an ordinance passed September 15, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland;" passed October 17th, 1898; and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding against the complainant or any conductor or employee, or any officer, representative or agent of the complainant, the object or purpose of, or relief sought by, said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel the complainant or any officer, representative, conductor or agent of the complainant, to accept the cash fare provided for in said ordinance or to accept tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof;
255 and from instituting or prosecuting any action or proceeding for violation of said ordinance or any part thereof; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act or proceeding for the recovery of any fine, penalty or forfeiture for violating said alleged ordinance or any part thereof; and from bringing any suit, action, or proceeding for the purpose of vacating the charter or annulling the existence of the complainant as a corporation, or the forfeiture of any of its

privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof or any of its provisions.

And it is further ordered and decreed that, until the further order of the court, said alleged ordinance of October 17th, 1898, in the bill of complaint described, shall not be binding upon or operative against said complainant.

Certified Copy of Order to Marshal for Service.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the 4th day of said month, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third, to-wit: on Monday, the 22nd day of May, A. D. 1899.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

Among the proceedings then and there had, were the following, to-wit:

THE CLEVELAND ELECTRIC RAILWAY Company
vs.
THE CITY OF CLEVELAND.
No. 5840. In Equity. Order of Injunction.

256 Upon motion of complainant, the affidavits of the respective parties, and arguments of counsel, the motion of complainant for a temporary injunction, as prayed for in the bill of complaint, is granted; and, until the further order of the court, it is ordered that the City of Cleveland, the mayor and common council of said city, and all officers, agents, attorneys and employees, representatives and departments of said city and their respective agents, representatives, and employees, and the director of law of said city and his associates and assistants and agents, and their respective successors in office, be enjoined, restrained and prohibited from putting into effect the ordinance in the bill of complaint described, to-wit, an ordinance entitled: "An ordinance to provide for a diminution of the rate of fare under section 6 of an ordinance passed September 15, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898; and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding against the complainant or any conductor or employee, or any officer, representative or agent of the complainant

the object or purpose of, or relief sought by, said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel the complainant or any officer, representative, conductor, or agent of the complainant to accept the cash fare provided for in said ordinance, or to accept tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof; and from instituting or prosecuting any action or proceeding for violation of said ordi-
257 nance or any part thereof; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act or proceeding for the recovery of any fine, penalty or forfeiture for violating said alleged ordinance or any part thereof; and from bringing any suit, action, or proceeding for the purpose of vacating the charter or annulling the existence of the complainant as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof or any of its provisions.

And it is further ordered and decreed that, until the further order of the court, said alleged ordinance of October 17th, 1898, in the bill of complaint described, shall not be binding upon or operative against said complainant.

THE UNITED STATES OF AMERICA, ss:

I, Irvin Belford, clerk of the circuit court of the United States, within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order of preliminary injunction entered upon the journal of the proceedings of said court in the therein entitled cause, at the term and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness, my official signature and the seal of said court, at Cleveland, in said district, this 27th day of May, A. D. 1899, and in the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
[SEAL.] By JNO. VAN NOSTRAN,
Deputy Clerk.

Endorsements on order, when issued: No. 5840. United States circuit court, northern district of Ohio, eastern division. The
258 Cleveland Electric Railway Co. *vs.* The City of Cleveland. Certified copy of order of injunction.

Endorsements on order, when returned:

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, *Northern District of Ohio,* } ss:

Received this writ on the 29th day of May, 1899, and on the same day, I served the same at Cleveland, on the within named The City of Cleveland, by delivering a true and certified copy thereof to T. H. Hogsett, director of law and acting mayor of said city of Cleveland, the mayor of said municipal corporation not found in my district.

M. A. SMALLEY,
U. S. Marshal,
By H. R. YOUNG, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Filed May 31, 1899.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

Petition for Appeal.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5840. In Equity. Petition on Appeal.

The above named defendant, conceiving itself aggrieved by the interlocutory order and decree granting a temporary injunction, made and entered on the 22nd day of May, 1899, in the above en-
259 titled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the sixth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the sixth circuit.

T. H. HOGSETT,
BEACOM, EXCELL & GAGE,
Attorneys for Defendant.

Dated June 13, 1899.

Endorsements on petition for appeal: No. 5840. United States circuit court, northern district of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Petition on appeal. File. W. H. T. Filed Jun-13, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell & Gage, attorneys for defendant.

260 *Assignment of Error, on Appeal.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	In Equity. No. 5840. Assignment of Error, on Appeal.

And now on the 13th day of June, 1899, came the said defendant, by T. H. Hogsett, Beacom, Excell and Gage, city solicitors and says that the interlocutory order and decree granting an injunction in said cause is erroneous and against the just rights of said defendant for the following reasons:—

First. Because the pleadings and evidence fail to show that to permit the said ordinance of the city of Cleveland passed October 17, 1898, which said ordinance complainant asks to have declared void, to be put into operation would impair the present contract rights of the complainant.

Second. Because said pleadings and evidence fail to show that said ordinance of October 17, 1898, is in conflict with the provisions of the Constitution of the United States or any amendment thereto, in that it impairs the obligations of existing contract rights of the complainant.

Third. Because said pleadings and evidence fail to show that said ordinance of October 17, 1898, is in conflict with section 10 of article 1, of the Constitution of the United States.

Fourth. That said pleadings and evidence fail to show that the enforcement of said ordinance of October 17, 1898, would constitute a taking of property without due process of law.

Fifth. Because said pleadings and evidence fail to show that the enforcement of said ordinance of October 17, 1898, would
261 deprive complainant of its property without due process of law, or deny to complainant the equal protection of the law.

Sixth. Because said pleadings and evidence fail to show that the rate of fare prescribed by said ordinance of October 17, 1898, is so unreasonably low as to deprive complainant of its property without due process of law, or to deny to complainant the equal protection of the law.

Seventh. Because said pleadings and evidence fail to show that

the ordinance in question is in contravention or violation of section one of article 14 of the amendments to the Constitution of the United States.

Wherefore, this defendant prays that the said order and decree may be reversed, and for all proper relief.

T. H. HOGSETT,
BEACOM, EXCELL & GAGE,
Attorneys for Defendant.

Endorsements on assignment of error: No. 5840. U. S. circuit court. The Cleveland Electric Railway Co., plaintiff, *vs.* The City of Cleveland, defendant. Assignment of error. File W. H. T. Filed Jun- 13, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell and Gage, attorneys for the City of Cleveland.

262 *Order Allowing Appeal.*

April Term, A. D. 1899, to-wit, June 13th, 1899.

Present: The Honorable William H. Taft, U. S. circuit judge.

THE CLEVELAND ELECTRIC RAILWAY Company
vs.
THE CITY OF CLEVELAND.
} No. 5840. Chancery.

The respondent, The City of Cleveland, a municipal corporation, considering itself aggrieved by the order and decree herein entered on the 22nd day of May, A. D. 1899, comes now and presents to the court its petition for the allowance of an appeal to the United States circuit court of appeals for the sixth circuit, together with an assignment of errors, asserted and intended to be urged in that behalf.

On consideration whereof, the court orders that, on a bond, as provided by law, to be approved by the clerk of this court, being executed and filed in the sum of two hundred and fifty dollars the said appeal is allowed, and it is ordered that a transcript of the record, proceedings and papers upon which the decree of this court was rendered in this cause, duly authenticated, be sent to the United States circuit court of appeals, according to law in such case provided.

Undertaking for Appeal.

Know all men by these presents, that we, The City of Cleveland, by John H. Farley, mayor, as principal, and Walter P. Rice and A. Wiener, as surety, are held and firmly bound unto The Cleveland Electric Railway Company, in the full and just sum of two hundred

and fifty dollars ($250.00), to be paid to the said The Cleveland Electric Railway Company, its certain attorneys, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of June, in the
263 year of our Lord one thousand eight hundred and ninety-nine.

Whereas, lately at a session of the April term of the United States circuit court for the northern district of Ohio and the eastern division in a suit pending in said court, between the said The Cleveland Electric Railway Company, complainant, and the said The City of Cleveland, respondent, in equity No. 5840, an order and decree was rendered against the said respondent, and the said respondent having obtained an appeal and filed a copy in the clerk's office of the said court to reverse the order and decree in the aforesaid suit, and a citation directed to the said The Cleveland Electric Railway Company, citing and admonishing it to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit on the 3rd day of October next.

Now, the condition of the above obligation is such, that if the said The City of Cleveland shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CITY OF CLEVELAND,
By JOHN H. FARLEY, *Mayor*.
WALTER P. RICE.
A. WEINER.

Sealed and delivered in the presence of—

T. H. HOGSETT.
M. B. EXCELL.

264 Endorsements on undertaking for appeal: No. 5840. United States circuit court, northern district of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant, Undertaking for appeal. Filed Jun- 16, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell & Gage, attorneys for defendant.

265 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

To the Cleveland Electric Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 13 day of July next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein The City of Cleveland is appellant and you are appellee, to show cause, if any there be, why the order and decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13 day of June, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third.

WM. H. TAFT,
Circuit Judge.

Service of the foregoing citation is hereby acknowledged and the appearance of the appellee is hereby entered.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Appellee.

[Endorsed:] 2664 Low fare notices 2664

266 *Stipulation Delaying Time of Filing Transcript in United States Circuit Court of Appeals.*

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } No. 5840. Stipulation.

Whereas an appeal from the interlocutory order granting an injunction heretofore made in this case has been taken to the United States circuit court of appeals, thereby making necessary the printing and forwarding to that court of the record in this case, and

Whereas the attorneys for the parties hereto are considering the

advisability of amending and have agreed to amend, the pleadings herein to the end that the constitutional question as to the right of the city of Cleveland to pass the ordinance of which complainant complains in view of the contract rights of complainant, may be properly and finally determined and adjudicated at the same time saving to each party all its rights to hereafter determine in this court the reasonableness in the reduction of fares provided for in said ordinance:—

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the printing and filing of the record in this case shall be delayed for the time being, and that until the said record shall be printed and filed in the United States circuit court of appeals, or until further stipulation as to the most practical manner of properly making and adjudicating the constitutional question heretofore referred to shall have been made, all the rights of

267 the parties hereto shall remain *status quo*.

KLINE, CARR, TOLLES & GOFF &
SQUIRE, SANDERS & DEMPSEY,
Attorneys for Complainant.

T. H. HOGSETT,
BEACOM, EXCELL & GAGE,
Attorneys for Defendant.

Endorsements on stipulation: No. 5840. Circuit court of United States, northern district of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Stipulation. "File W. H. T Filed Jul- 8, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O.

268 *Order Enlarging Time for Filing Transcript in Circuit Court of Appeals.*

April Term, A. D. 1899, to-wit, July 8th, A. D. 1899.

Present: Honorable William H. Taft, U. S. circuit judge.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } 5840. Equity.

It appearing to the court, by stipulation herewith submitted, that the appellant, The City of Cleveland, by its solicitors, desires to have the time within which the transcript of record is required to be filed, according to the citation duly issued and signed herein, in the circuit court of appeals for the sixth circuit, enlarged

It is therefore ordered, in accordance with such stipulation, that the time within which such transcript of record shall be filed in the

circuit court of appeals for the sixth circuit be, and hereby is, enlarged to September 1", 1899.

Done at Cincinnati, Ohio, this 8th day of July, A. D. 1899.

WM. H. TAFT,
Circuit Judge.

Order of Continuance.

April Term, A. D. 1899, to-wit, August 14th, A. D. 1899.

Present: Honorable Horace H. Lurton, U. S. circuit judge.

THE CLEVELAND ELECTRIC RY. CO. *vs.* THE CITY OF CLEVELAND. } 5840. Chancery.

This cause is continued to the next term of this court.

269 *Notice to Clerk to Delay Forwarding of Transcript of Record to Circuit Court of Appeals.*

The Circuit Court of United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5840. In Equity.

To the clerk of said court:

You are hereby notified to delay the forwarding of the record and papers in the above case to the U. S. circuit court of appeals, until November 1, 1899, in pursuance with the agreement between the attorneys in said case.

T. H. HOGSETT,
Attorneys for Defendant.
Per E.

Endorsements on notice: No. 5840. The Cleveland Electric Co. *vs.* The City of Cleveland. Notice to clerk. Filed Sep. 1, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, att'y for def'ts.

270 *Order of Continuance.*

October Term, A. D. 1899, to-wit, February 3rd, A. D. 1900.

Present: Honorable William H. Taft, U. S. circuit judge, and Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO. *vs.* THE CITY OF CLEVELAND. } 5840. Chancery.

This cause is continued to the next term of this court.

Order of Continuance.

February Term, A. D. 1900, to-wit, March 12th, A. D. 1900.

Present: Honorable William H. Taft and William R. Day, United States circuit judges.

THE CLEVELAND ELECTRIC RY. CO. *vs.* THE CITY OF CLEVELAND. } 5840. Chancery.

This cause is continued to the next term of this court.

Leave to File Amended Bill by May 1st, 1900.

April Term, A. D. 1900, to-wit, April 3rd, A. D. 1900.

Present: Honorable William R. Day, U. S. circuit judge, and George P. Wanty and Charles D. Clark, United States district judges, sitting by designation.

THE CLEVELAND ELECTRIC RY. CO. *vs.* THE CITY OF CLEVELAND. } 5840. Chancery.

In this cause, on application of counsel for complainant leave is granted to file an amended bill herein by May 1st, A. D. 1900.

271 *Leave to File Amended Bill Instanter.*

April Term, A. D. 1900, to-wit, May 5th, A. D. 1900.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } 5840. Chancery.

On motion of complainant, it is ordered that said complainant has leave to file an amended bill of complaint instanter, and that the temporary injunction heretofore granted in this cause be and the same is hereby continued in full force and effect.

272 *Amended Bill of Complaint.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } Amended Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

The above-named complainant, The Cleveland Electric Railway Company, is a citizen of the State of Ohio, and brings this its amended bill against the above-named defendant, The City of Cleveland, a municipal corporation of the State of Ohio and a citizen thereof.

Thereupon your orator complains and says:

I. The complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway hereinafter in this amended bill more particularly set forth.

The defendant, The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and, in respect to the matters and things hereinafter set forth as to the ordinances affecting this complainant, said defendant acts under delegated power from the legislature of the State of Ohio, and, so acting, has made sundry contracts with your orator and its predecessors in interest, under which it is so operating its said lines of railway in the city of Cleveland.

II. That the amount in controversy in this action, which is a civil action, amounts, exclusive of interest and costs, to more than
273 the sum off five thousand dollars, and is a controversy arising under the Constitution of the United States, in this: that your orator seeks relieff against the defendant by this bill by reason of an attempt on the part of the defendant to enforce against your orator a law of the State off Ohio impairing the contract rights of your orator, and the operation of which, if permitted, would take from your orator its property without due process of law and deny to it the equal protection of the law,—in contravention and violation of the provisions of the Constitution of the United States; and especially contrary to and in violation of section 1, of article 14, of the amendments to the Constitution of the United States, and section 10, of article 1, off the Constitution of the United States.

III. Your orator is a consolidated railway company and was organized in the year 1893, with a capital stock of twelve millions of dollars, substantially all of which is issued, and, in addition to said stock, has outstanding a bonded indebtedness, secured by mortgage upon its property, aggregating about $3,750,000.00, and a floating debt of about $250,000.00; all of which indebtedness represents money which has been invested in said property; that, as a consolidated company, your orator was formed by the consolidation of the following named constituent companies, which, at the time of and prior to such consolidation, owned and operated street railways in the city of Cleveland under ordinances duly passed by the said municipality, the city of Cleveland, and accepted by each of said companies; and by the terms of such consolidation and the force and effect thereof as provided by the statutes of Ohio in such cases made and provided, your orator became and is possessed of all the rights, franchises, privileges, and property theretofore possessed by said constituent companies and each of them. The constituent companies which were so consolidated were as follows: The
274 East Cleveland Railroad Company; the Broadway & Newburg Street Railroad Company; the Brooklyn Street Railroad Company; and the South Side Street Railroad Company.

IV. That each of said constituent companies so consolidated was operating its respective lines of street railway under ordinances passed by the city of Cleveland in pursuance of power delegated to it by the legislature of the State of Ohio, and which ordinances, having been accepted by said separate railway companies, became and were contracts, binding upon both said city and upon each of said railway companies during the periods of time for which the said grants were made.

V. The said East Cleveland Railroad Company was a corporation which had been in existence and operated lines of street railway in the city of Cleveland since about the year 1859, and, at the time of said consolidation, owned and was operating several lines of street railway in said city, namely:

The line which was known as the Euclid Avenue line, extending

from the business portion of the city on Bank street, through Superior street, Euclid avenue, Erie street, Prospect street, Case avenue and Euclid avenue to the city limits.

The line known as the Garden Street line, which was operated from Bank street through the public square and on portions of Euclid avenue, Erie street and Garden street.

The line known as the Cedar Avenue line, which at that time was operated from Bank street upon Superior, through the public square and on certain portions of Euclid avenue, Prospect street, Perry street and Cedar avenue.

The line known as the Wade Park Avenue line, which was operated upon Bank street, through Superior and portions of the public square, Euclid avenue, Prospect street, Case avenue, Perkins
275 avenue, Willson avenue, Hough avenue, Dunham avenue, and Wade Park avenue to the easterly limits of the city.

The aggregate mileage of the lines operated by said company was about forty miles, and each of said lines had been constructed and was in operation under grants from the city of Cleveland, and upon the faith of which said company has so constructed its lines of railway; and in and by which said grants the city and said company, as authorized by the statutes of Ohio, had agreed as to the terms and conditions and the period of time for the operation by said company of its said lines of street railway.

VI. Your orator says that, prior to the 15th day of September, 1879, the said East Cleveland Railroad Company was operating its main line of railway from the intersection of Superior and Water streets to the easterly limits of the city on Euclid avenue under various separate grants, some of which ran from the city council of the defendant, some had been granted by the county commissioners before the territory affected thereby became part of the city of Cleveland, and still other grants from the authorities of the former village of East Cleveland before such territory became part of the city of Cleveland; and the contract rights of the company for the operation of its road easterly from Willson avenue contained few restrictions, and none respecting the rates of fare to be charged, and extended for a period of nearly twenty years, and at that time, east of Willson avenue upon Euclid, there was but a single track, and, under contracts and agreements then in force between the company and the public authorities, it had the right to charge passengers one fare from Water street to Willson avenue, and another fare from Willson avenue to Fairmount street, and still another fare from Fairmount street to the city limits; and it was, in fact, at
276 that time, charging passengers two fares between Water and Superior streets and the city limits.

VII. In this situation, said East Cleveland Company and the said city of Cleveland—said city being authorized thereto by the statutes of the State—entered into a new contract providing for the renewal of the grant to the said East Cleveland Railroad Company, for the reconstruction, maintenance and operation of a double track street

railway over a portion of the line then operated by said company, to-wit: from Superior and Water streets, through Superior street, around the public square to Euclid avenue, through said avenue to Erie street, thence to Prospect street, thence to Case avenue, through Case avenue to Euclid avenue, and along said Euclid avenue to Willson avenue, subject to certain limitations and conditions therein expressed; and in and by said ordinance new conditions were imposed as respects street paving to be done by said company, removal of snow and ice from the tracks, and sundry other similar provisions; and in and by section 6 of said ordinance it was provided that the said East Cleveland Company should not charge more than five cents each way for a passenger over the whole or any part of the line therein renewed; that said company might charge a reasonable compensation for carrying packages, and that the council reserved to itself the right to thereafter increase or diminish the rate of fare as it might deem justifiable and expedient; and under the provisions of said last mentioned ordinance and grant, which by its terms was to remain in force for a period of twenty-five years from the 20th day of September, 1879, the said company reconstructed its said tracks between Superior and Water streets and Willson avenue as aforesaid, and thereafter, up to the 4th day of April, 1883, continued the operation of its said line and charged, as it was permitted to do by
277 said ordinance then in existence, one fare of five cents between Superior and Water streets and Willson avenue, and an additional fare of five cents from Willson avenue eastwardly to the end of its line. Which said ordinance, passed September 15th, 1879, is in the words and figures following, to wit:

"An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland.

Whereas, the legislature of the State of Ohio did, on the 12th day of June 1879, pass an act entitled 'An act to amend sections 4 and 5 of chapter 5 of division 8 of the act entitled An act to amend, revise and consolidate the statutes relating to municipal corporations, to be known as title 12, part 1, of the act to revise and consolidate the General Statutes of Ohio,' passed May 14th, 1878, in which act it is recited, among other provisions relating to grants and permits for the use of streets for the purpose of constructing and operating street railroads therein, and for the renewal of grants heretofore made to individuals, companies, or corporations, that the council of 'any city of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interests;' and

Whereas, the East Cleveland Railroad Company, a corporation existing under the laws of Ohio, and now and heretofore operating a street railroad in and through certain streets of the city of Cleveland, under and by virtue of a grant and permit previously ob-

tained, has made application in writing for a renewal of such grant and permit to maintain and operate its said street railroad in and along the streets as heretofore, and now located and operated for the period of twenty-five years from and after the 20th day of September, 1879, therefore

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the East Cleveland Railroad Company, its successors and assigns, be and the same are hereby authorized to reconstruct, maintain and operate its double track street railroad, with the necessary switches, turn-tables and turn-outs as heretofore constructed and now maintained and operated in the city of Cleveland, commencing on Superior street at the intersection of Water street; thence through Superior street to and around the southwest corner of Monumental square to Euclid avenue; thence through said avenue to Erie street; thence through Erie street to Prospect street; thence through said Prospect street to Case avenue; thence through said Case avenue to Euclid avenue; thence through and along said Euclid avenue to Willson avenue, subject to the following conditions and limitations, to wit:

SEC. 2. All track hereafter laid by the said company to be of the same gauge as heretofore and now existing, and the rail of the same pattern as now laid and used on said road, with suitable gutters at all necessary points, so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the city council, and subject at all times to be taken up and relaid whenever deemed necessary by the council,
278 for the purpose of regrading said streets, constructing sewers, laying water or gas pipes therein at the expense of the company.

SEC. 3. Whenever it shall be deemed necessary to grade, pave and improve any streets wherein said tracks are laid, the company shall be required to pave any part or all of the track between the rails with gravel, stone or other pavement as the council may deem proper; and if said company, after reasonable notice, shall fail to do such paving at the same time that any such street or streets are being so improved by said city, or at the time named in such notice, then said city may do such paving and assess the cost of such paving against said company in the same ordinance, and may collect the amount thereof by suit or otherwise according to law. And said company is also required to keep such pavement in constant good order; said paving and repairing to be done under the direction of and to the acceptance of the board of improvements.

SEC. 4. Said company is hereby required to keep clean and free from dirt so much of its roadway in said street as may be occupied by its said tracks and turn-outs, and said company shall cause the dirt or street cleanings to be removed or placed in heaps in such manner as not to interfere with the free use of the streets by the public; and in all cases when it becomes necessary to remove snow or ice from said tracks, it shall be distributed evenly over the surface

of the balance of the street, so as not to interfere with the free use and occupancy of the same by the public.

SEC. 5. Said company shall place and continue on said railroad good cars with all the modern improvements for the convenience and comfort of passengers, and shall run cars thereon as the public convenience may require, under such directions as the city council may from time to time prescribe.

SEC. 6. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient.

SEC. 7. It is understood and agreed that the city of Cleveland shall not be held liable to said company for any damage to it arising from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repairing of the same, or from any delay or damage that may be caused by fire or otherwise. All rights vested in the city council, the trustees of water works, or gas company, in respect to the care and improvement of streets, the construction of sewers, culverts or drains, and the laying of water or gas pipes therein, are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges granted to said company by virtue of this ordinance, shall be subject thereto; and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of said railway, and the said company shall indemnify and hold the city harmless from
279 any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by the reason thereof, or by running the cars thereon.

SEC. 8. And be it further ordained, That the following specifications are hereby required by the council in the running of said company's cars:

1. While the cars are turning the corners from one street to another, the horses shall not be driven faster than a walk.

2. The rate of speed of all cars shall be subject to the direction of the city council from time to time.

3. No car shall be allowed to stop on a cross-walk, nor in front of any intersecting street, except to avoid collision or to prevent danger to persons in the street; nor shall any car be left or remain standing in any street at any time unless the same is attached to a team and waiting for passengers.

4. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform over the crossing.

5. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving toward it, and on the first appearance of danger to such team or person, or other obstruction, the car shall be stopped in the shortest time and space possible.

6. The conductor shall not allow ladies or children to enter or leave the cars while in motion.

7. Conductors shall announce to the passengers the names of the streets or places wherever the cars cross in connection with any other railroad track.

8. The cars, after sunset, shall be provided with signal lights, and each team shall at all times have a bell attached to some portion of the harness.

SEC. 9. The cars of said company shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars, on conviction before the police court, and cost of prosecution; and all fines collected under this section shall be paid into the city treasury, to the credit of the street fund; provided, that if any person or persons shall have cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load and unload the same, without being liable to the penalty attached by this section; provided, that such person or persons shall have first obtained the consent of the board of city improvements for such removal.

SEC. 10. Said company shall be required to pay to the city of Cleveland an annual license of ten dollars for each car running on this railroad.

SEC. 11. The council hereby reserves the right to grant to any other company, corporation or individual the joint use of the tracks of the said East Cleveland Railroad Company herein described and provided for in any and all of the said streets, upon such terms and conditions as the council shall deem just and equitable; provided, that this reservation east of Erie street, on said road, is a reservation, for and solely for and limited to, such reasonable use of said company's tracks as may be necessary for the use of cross town lines—not parallel lines—which may hereafter be constructed, and not for the purpose of reserving the joint use of said tracks with other
280 lines of road which may desire to run thereon.

SEC. 12. The authority and privileges in this ordinance named and provided for are to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879; the said company, its successors and assigns, performing the several conditions by this ordinance required.

SEC. 13. That in case of failure, by neglect or otherwise, on the part of said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance,

together with all and singular the general ordinance and the future ordinances of the city in relation to said road, the privileges hereby granted and renewed, shall become void and of no effect, and shall cease upon the adoption of a resolution of council to that effect.

SEC. 14. The franchise herein mentioned is granted on the condition that the council shall have the same power to regulate the fares to be charged on the road operated by said East Cleveland Railroad Company east of Willson avenue, and to regulate the operation of said last named portion of said road that is herein provided for as to the portion west of said Willson avenue, leaving the contract made between said company and the village of East Cleveland unaffected in all other respects.

Passed September 15, 1879."

VIII. Your orator says that, thereafter, on or about April 4th, 1883, said company entered into a new contract with said city, evidenced by ordinance duly passed and accepted by said company, by which, upon certain terms and conditions, it was granted the right to extend and to build an additional track and operate a double-track line on Euclid avenue from the west line of Willson avenue to the east line of Fairmount street, and in and by such ordinance and grant said company agreed that it would charge but one fare of not more than five cents between the westerly terminus of the company's road on Superior street and the easterly terminus of its line, and that the rights granted should expire on the 20th day of September, 1904; and in and by said contract it was provided that the council reserve to itself the right to thereafter increase or diminish the rate of fare between the westerly end of said company's line on Superior street and the city limits, as it might deem justifiable and expedient; which said ordinance is in the
281 words and figures following, to-wit:

"An ordinance granting to the East Cleveland Railroad Company the right to extend, lay, and operate its double track in Euclid avenue from the west line of Willson avenue to the east line of Fairmount street.

SECTION. 1. Be it ordained by the city council of the city of Cleveland, That the East Cleveland Railroad Company is hereby granted the right to extend, lay and operate its double-track on Euclid avenue from the west line of Willson avenue to the east line of Fairmount street upon the terms and conditions hereinafter expressed.

SEC. 2. That said double track shall be so contructed and laid as to leave an equal space between the outer rails of each track and the lines of curbstones on either side of said avenue, and to be laid to such grades, and such distance apart, and at such times as shall be directed by the board of improvements; and the spaces between the outside rails of the two tracks shall be paved with Medina, N. Y., dressed block sandstone, laid in the same manner as is laid in the

street railroad tracks on Prospect street, between Sterling and Case avenues, and said double track shall be managed and conducted in compliance with and subject to all other ordinances now in force, or which shall hereafter be passed, governing street railroad companies in the city of Cleveland.

SEC. 3. The right herein given is granted upon the express conditions, however, that said company shall charge but one fare of not more than five cents for each passenger, between the westerly terminus of said company's road on Superior street, and the city limits, the company shall run through cars at least once every ten minutes during the hours of 6 a. m. and 8 p. m., and that the right of said company to have and operate its said railroad on said Euclid avenue, between the west line of Willson avenue and the city limits, shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said company's line lying west of said Willson avenue.

SEC. 4. That the council reserves to itself the right to hereafter increase or diminish the rate of fare between the west end of its said company's lines in Superior street and the city limits as it may deem justifiable and expedient, and that said company may be required to keep in order the pavement and roadway ten feet in width along its track and the crosswalks to the full width of the streets through which said road passes, under direction of the street commissioner.

SEC. 5. That this ordinance shall be in force from and after its passage and legal publication.

Passed April 4, 1883."

IX. Your orator further shows that, upon the making of said last mentioned contract, the relations between the city of Cleveland and the said East Cleveland Railroad Company were so far changed that the company had agreed to carry passengers over its lines as far easterly as the city limits for the rate of fare specified in the last mentioned ordinance,
282 to-wit: five cents for each passenger, but it had not agreed and was under no obligation to run all of its cars through, and was, in fact, within its lawful right, operating only a portion of its cars as through cars, and was under no obligation to transfer, and was not transferring, passengers who desired to go east of Willson avenue who had taken passage upon a car which did not go beyond that point; but such arrangement and operation of its cars were unsatisfactory to the municipality as well as to the company, and thereupon, in March, 1886, to the end that the public might be given through car service from the business portion of the city to the easterly limits on Euclid avenue, a new contract was entered into between the city of Cleveland and said East Cleveland Railroad Company, duly evidenced by ordinance passed, and accepted by said East Cleveland Railroad Company, by which said company upon its part became obligated to construct and operate a

double-track railroad in Euclid avenue between the easterly line of Fairmount street and the easterly limits of the city, such territory theretofore having been occupied by a single track only, and thereby making its entire Euclid Avenue line a double-track street railroad; and in and by said ordinance it also agreed to pave between the rails of each track, together with the spaces between the rails, and to keep certain portions of the pavement in good repair; each and all of which obligations were in addition to those existing under former contracts between it and the city; and in and by said ordinance an entirely new contract and agreement, superseding all prior contracts, was made between said city and the said railroad company with respect to the rates of fare which it should charge over its said line so to be made into a double-track through line from Superior and Water streets to the easterly limits of the city upon Euclid avenue; the
283 agreement between the city and the railroad company with respect to the fare thereafter to be charged being as follows: That said company should operate the whole of said track as a through line, with through cars, and should charge and collect but one fare of not more than five cents for each passenger one way, in either direction, between the easterly limits of the city on Euclid avenue and the westerly terminus of said company's tracks at the intersection of Superior and Water streets; and that the company should run through cars over said line between the points last named, in either direction, as the public convenience in the opinion of the common council by resolution expressed should require, and that the contract so made should be in force until the 20th day of September, 1904; which contract, having been so duly expressed by ordinance and accepted by said East Cleveland Railroad Company, became a valid contract between it and the city of Cleveland, by which said company agreed, in consideration of the grants therein made to it, to make the necessary expenditures contemplated in said ordinance with respect to the construction of its tracks, and assumed and agreed to perform additional obligations in respect to paving, and agreed that it would operate said road in accordance with the terms of said ordinance until the 20th day of September, 1904; and that during such time it would carry passengers at the rate of fare so fixed in said ordinance, to wit: five cents for each passenger one way, in either direction, over said line; and in pursuance of said contract, and in reliance thereon, the said company proceeded to construct its tracks as therein contemplated, at great expense, and to in all respects comply with the conditions of said ordinance; and, within the time contemplated by the ordinance, began the operation of a through line of cars in accordance with the terms thereof, and said company and its successor,
284 your orator, have, ever since said time, fully complied with the terms and conditions of said last mentioned ordinance, and are now complying therewith, although said company thereafter voluntarily began the sale of tickets, good for passage, at a less

rate than it was authorized to charge in said ordinance, to wit: at a rate of eleven tickets for fifty cents. The said ordinance, passed on March 15th, 1886, and so accepted by said company, is in the words and figures following, to-wit:

"An ordinance granting to the East Cleveland Railroad Company the right to extend and operate its double-track street railroad in Euclid avenue, between the easterly line of Fairmount street and the easterly limits of the city.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the East Cleveland Railroad Company be and is hereby granted the right to extend, lay and operate its double-track street railroad from the easterly line of Fairmount street to the easterly limits of the city, upon the terms and conditions herein specified.

SEC. 2. That said track shall be constructed in a thorough and substantial manner, four (4) feet apart, along the center of said avenue, between the said points, the center line of the four feet space to be on the center line of Euclid avenue, and to be laid in such manner, to such grades, and at such time as the board of improvements shall direct.

SEC. 3. That the spaces between the rails of each track, together with the spaces between the tracks, shall be paved with broken or split boulders, laid with broken face up, and the spaces between the boulders filled with asphaltic cement, as specified by the city for dressed block stone paving, the said boulder paving to be done at the expense of said railroad company, and at the same time as the balance of said roadway is paved, the material, manner of construction and workmanship to be subject to the direction and approval of the board of improvements. The said boulder pavement shall be kept in constant good repair by said company, to the acceptance of said board. Said railroad company shall grade the space of fourteen (14) feet wide from outside to outside of its rails, also at its own expense. Said double-track, when completed, shall be managed and conducted at all times subject to the conditions of this ordinance, and any amendments hereto, and all ordinances now in force and that may be hereafter passed, governing street railroads, so far as the same are applicable.

SEC. 4. That the rights, as herein granted and conferred, are upon the express conditions, however, that said company shall charge and collect but one fare of not more than five (5) cents for each passenger one way, in either direction, between the easterly limits of the city on Euclid avenue, and the westerly terminus of said company's tracks at the intersection of Superior and Bank streets; and upon the further condition that said company shall run through cars over said line between said points last named in each direction, as the public convenience in the opinion of the common council, by resolution expressed, may require.

285 SEC. 5. That the rights herein granted to lay and operate a double-track street railroad in Euclid avenue, between Fairmount street and the easterly limits of the city, shall cease and terminate upon the 20th day of September, A. D. 1904, as provided for said company's tracks in Euclid avenue, west of Fairmount street.

SEC. 6. That said railroad company shall reimburse the city after the completion of said work the cost of all engineering done by said city in the construction of said tracks and boulder pavement.

SEC. 7. That said company shall, within thirty days after the passage of this ordinance, file with the city clerk a copy of a resolution of said company accepting the terms and conditions hereof, and pay into the city treasury the cost of printing and publishing this ordinance, otherwise the rights herein granted shall be forfeited and void.

SEC. 8. That this ordinance shall be in force from and after its passage and legal publication.

Passed March 15, 1886."

X. Prior to July 13th, 1888, the line of railway of the said East Cleveland Railroad Company had been operated by horse power, and at that date such progress had been made in perfecting the system of propelling cars by electric motors that the company was willing to incur the necessary expense of equipping certain of its lines with electricity, and there was at that time an earnestly expressed desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit. Thereupon the city council of the defendant city and the said East Cleveland Railroad Company entered into a still further contract, by ordinance duly passed and accepted, providing for the equipment and operation of said company's Euclid Avenue and Cedar Avenue lines by electricity; and in and by said ordinance and contract it was provided that the privilege of constructing the electric system and the operation of said lines thereby was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure the same, and that the right to operate said lines, after the expenditure of said large sums of money so necessary for their equipment; should be and remain in

286 force for the period of twenty-five years from and after the passage of said ordinance, both upon the main line and what is known as the Cedar Avenue line of said company, and provided that nothing in the ordinance should be construed to authorize any increase of present fare for transportation over any part of said company's lines; and your orator shows and alleges that, at the time of the passage of said ordinance and its acceptance by said company, the rate of fare therein referred to, which was not to be increased, was, as hereinbefore set forth, five cents for each and every passenger carried in either direction over said lines; and it was in terms provided in said ordinance that its acceptance should be deemed an agreement with the said company, by which it agreed to perform

all and singular the matters and things therein agreed by it to be performed. The council were also given permission in and by said contract to require the company thereafter to equip the entire length of its main and Cedar Avenue lines with electricity; and thereafter, in reliance upon its said contract and the performance thereof by the city of Cleveland, said company proceeded, at the expense of many hundreds of thousands of dollars, to equip its said lines with electricity in pursuance of the terms of said ordinance which said ordinance is in the words and figures following, to-wit:

"An ordinance granting the East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar avenues.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That, whereas, the East Cleveland Railroad Company, operating a street railway under and by virtue of certain ordinances of the city upon Euclid avenue and also upon Cedar avenue in said city, have, by a communication to the common council of date May 14, 1888, signified its willingness and desire to change the motive power upon said Euclid avenue and Cedar avenue between certain points in such communication designated; and

Whereas, there is a desire on the part of the people residing in the easterly portion of the city for a more convenient mode of transit and that an electric system be substituted for animal power
287 for the movement of cars; wherefore the East Cleveland Railroad Company is hereby granted permission to erect and maintain poles and wires and the necessary appliances and fixtures for conducting currents of electricity for the purpose of transmitting and producing motive power to propel and operate the cars upon the following named streets in said city, to-wit: Euclid avenue from Willson avenue easterly to the city limits, Cedar avenue from a point near the Cleveland & Pittsburgh Railroad Company's right of way in said avenue easterly to a point about 1,500 feet east of Fairmount street. The erection of such poles and the placing of wires thereon shall be under the supervision of and subject to the control of the city civil engineer; such poles shall not be over twenty-five feet in height above the ground and shall not be over six inches in diameter at the base, shall be painted in dark color, and repainted from time to time as the board of improvements may direct; they shall be set 125 feet apart, except otherwise expressly permitted by the city civil engineer; such poles shall be placed at such points near the curbstone as shall be designated by the city civil engineer; should it become necessary in the prosecution of any work by the city, that such poles should be temporarily moved, such removal shall be made by said company and such poles shall be reset at its own cost, without any claim or damage therefor on the part of said company, and such company shall use such precautions for safety

from time to time as the board of improvements may direct or require.

SEC. 2. The running of cars on any part of the lines of such company may be suspended by the board of improvements for such reasonable time as may at any time be necessary on account of repairs of streets or sewers or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid, the same shall be taken up and relaid at the expense of said railroad company.

SEC. 3. Said railroad company shall at all times hereafter defend, keep harmless and indemnified the city of Cleveland, of and from all damages, lawful claims and demands for injuries to persons or property, costs and expenses, to which said city may be subjected or made liable by any proceeding at law or in equity growing out of the grant of the privileges in this ordinance granted, or out of the exercises and enjoyment of the same by said company.

SEC. 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the council and approved by the board of improvements as to the rate of speed it may run its cars on the streets heretofore designated, and while the cars of said company are in motion or about to start, a bell shall be sounded at such times as may be necessary to warn persons of danger.

SEC. 5. The said permission herein given is upon the condition that this grant shall be exercised within the period of six months from the passage hereof, and is also granted with all the privileges and subject to all the conditions of this ordinance and of the several ordinances by which the East Cleveland Railroad Company is permitted to lay rails and operate cars thereon in the streets of the city of Cleveland, so far as not inconsistent herewith and to the ordinance governing street railroads and all the ordinances in amendment thereof and in addition thereto. And that said railroad company shall, whenever it becomes necessary to pave or repave the streets along its line, pave or repave and keep in constant repair for a single track, 7 feet of the pavement, and for a double track 16 feet.

288 SEC. 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar Avenue lines, but nothing herein shall be so construed as to authorize any increase of present fares for transportation over any portion of said company's lines; provided, that if the said East Cleveland Railroad Company shall, by said electrical system, fail to provide a mode of transit which shall be deemed satisfactory to the board of improvements, or if, from any cause, said company shall fail to extend the said electrical system over their entire main and Cedar Avenue lines

within eighteen months from date of passage of this ordinance, then said ordinance shall be null and void, so far as it relates to extension of charter.

SEC. 7. Said railroad company shall, in writing, accept the permission and privileges hereby granted and agreed to, comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted within thirty days after the passage of this ordinance, and shall within said time, file the said writing with the city clerk, otherwise this ordinance shall be null and void; and such acceptance shall be deemed an agreement of the said railroad company with said city to perform all and singular the matters and things required of said company to be performed under this ordinance.

SEC. 8. Whenever the council shall so require the said company shall use the same system as herein provided on the entire length of their main and Cedar Avenue lines.

SEC. 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 13, 1888."

XI. Thereafter, the said East Cleveland Railroad Company, desiring to extend its street railroad upon certain streets of the city of Cleveland, and to make what was known thereafter as the Wade Park Avenue line, entered into another contract with the city of Cleveland, duly evidenced by ordinance passed and accepted, by the terms of which it was given authority to construct and operate said line known as the Wade Park Avenue line, the company agreeing, in consideration thereof, to do certain additional paving and to submit to various other requirements as in said ordinance expressed, and with respect to the rate of fare to be charged by said company, it was in said ordinance and contract provided, that no increase of fare should be charged by said company on any part of its main line or said
289 extension, and that one fare, not to exceed five cents, or one of said company's tickets, should entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water streets to the easterly limits of the city; that, in compliance with the terms of said ordinance and contract, said East Cleveland Company constructed and placed in operation said Wade Park Avenue line, at great expense, and since said time has been operated at the rates of fare therein fixed, and, in all respects, the conditions of said ordinance complied with; which said ordinance, passed April 12, 1889, is in the words and figures following, to-wit:

"An ordinance to grant the East Cleveland Railroad Company the right to extend its street railroad along and upon Case, Perkins, Willson, Hough, Dunham, and Wade Park avenues, and to operate said extension by electricity or horse power.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the East Cleveland Railroad Company its successors and assigns, are hereby authorized and empowered to extend their line of street railroad as a double tract railroad, with the necessary curves and cross-overs as determined and approved by the board of improvements, from the intersection of Euclid and Case avenues, in a northerly direction in Case avenue to Perkins avenue, thence easterly in Perkins avenue to Willson avenue, thence northerly in Willson avenue to Hough avenue; thence easterly in Hough avenue to Dunham avenue; thence northerly in Dunham avenue to Wade Park avenue, thence easterly in Wade Park avenue to the easterly limits of the city, in accordance with the plan of said tracks, curves and cross-overs filed with the board of improvements *and* seventh day of September 1888, and said extension herein authorized to be constructed and operated on or before July 1, 1889, in accordance with the general street railroad ordinance of the city and subject to the approval of the board of improvements.

SEC. 2. That if the motive power to operate the extension herein provided for, shall be by electricity, the nature kind and height of poles and wires or other appliances necessary for its successful operation upon the public streets shall be under the control and subject to the approval of the board of improvements and city civil engineer, and said railroad company shall pay the city for all engineering and supervision deemed necessary in the proper construction and placing of said tracks, paving, wires, poles, etc.

SEC. 3. That in all cases where pavements are now laid or in contemplation on the line of said proposed extension, said company shall grade and pave, or repave, as the case may be, at its own expense, the entire space from outer rail to outer rail, or fourteen feet in width, of all of its tracks, curves and cross-overs, with the same material and kind of pavement as is laid in or contemplated for the balance of the adjoining roadway, and in the case of streets now paved shall take up and relay so much of said pavement as may be required to make a good job, and upon all streets upon the balance of said route not so paved nor in contemplation, and fourteen foot space between the outer rails shall be paved with the best quality of common Medina stone pavement laid dry, as specified for city work, all to the satisfaction and acceptance of the board of improvements at the same time that said tracks are laid or constructed; and in all cases upon any street where it becomes necessary in the judgment of said board of improvements, by reason of the laying of said tracks, to widen the roadway of any of said streets, either by setting back the curb or changing the gutters, lamp-posts, water boxes catchbasins or other improvements, all such widening

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or changes shall be made at the expense of said railroad company upon the orders and to the acceptance of the board of improvements, whether required at the time of laying said tracks or at any subsequent time.

SEC. 4. That said permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line or of said extension, and but one fare not exceeding five cents, or one of said railroad company's tickets, shall entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water streets to the easterly limits of the city, or from the easterly limits of the city to the intersection of Lake and Water streets.

SEC. 5. That said council reserves to itself the right to grant to any person or persons, company or corporation, a joint use, for street railroad purposes, of the tracks and appliances, trolley wires, poles, electricity, etc., herein provided for, upon said Willson avenue, between Perkins avenue and Hough avenue and upon Wade Park avenue between Dunham avenue and the easterly limits of the city, upon such terms and conditions as said council shall deem just and reasonable, in case of failure of companies to come to an agreement, and that the right to construct and operate the extension of said double tracks and appliances, as herein provided for, shall terminate with the present grant for said East Cleveland Railroad Company's main line.

SEC. 6. That this grant is given to said East Cleveland Railroad Company, subject to the provisions of this ordinance and the general ordinance regulating street railroads in the city of Cleveland, and all other ordinances now in force or that may be hereafter passed regulating street railroads and amendments thereto or hereto.

SEC. 7. That said railroad company shall file with the city clerk, within thirty days after the passage of this ordinance, a written acceptance of the conditions and privileges herein granted and therein agree to comply with and adopt and abide by all the provisions, conditions and instructions upon which the same are granted, and such acceptance of the terms of this ordinance shall be deemed an agreement by said company with the city of Cleveland to perform all and singular the conditions and things required of said company under this ordinance, otherwise this ordinance shall be null and void.

SEC. 8. That this ordinance shall be in force from and after its passage and legal publication.

Passed April 12, 1889.

291 XII. Up to and prior to May 29th, 1893, the said East Cleveland Railroad Company, the Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company were engaged in the operation of their respective lines of road in various and different parts of the city of Cleveland, and, as authorized in various contract grants

under which they had constructed their said lines of railway and were operating the same, each and — of said constituent companies were charging a cash fare of five cents, and that their right so to do was fixed by the terms of their respective contracts and agreements with the city, and there was not, at any time, as respects any one of said constituent companies, power in the common council of the city of Cleveland to in any manner compel said companies, or either one of them, during the existence of their respective grants, to reduce the cash fare to be charged by said companies, or either one of them, below a cash fare of five cents. Your orator also shows that each of said constituent companies operated its line of railway as an independent line; that no system of transfers (except between the South Side and Brooklyn lines) from the line of one of said roads to the lines of others was in force, so that a passenger, having occasion to use more than one of said lines, was obliged to pay two fares of five cents each; and each and all of the grants under which said companies were so operating under the rights aforesaid, prior to the 29th day of May, 1893, are still in force and effect.

XIII. On or about April 11th, 1893, the said constituent companies in the next preceding paragraph mentioned, entered into an agreement of consolidation, in conformity with the statutes of Ohio authorizing them so to do, and formed and organized your
292 orator as a consolidated company, by virtue of which consolidation, as hereinbefore alleged, your orator at once became possessed of and vested with all and singular the property, rights, franchises, and privileges *and* each and all of said constituent companies, and thereupon, upon such consolidation being effected, and it being the intention of your orator to thereafter operate said lines as one entire system and to give to the public in the city the privilege of riding over said system by a continuous passage for one fare, your orator applied to the common council of the city of Cleveland—said council having, under delegated authority from the legislature, control of the public streets in said city, for its consent and approval of the terms of said consolidation so far as they related to the maintenance and operation of said various lines and the rates of fare which should be charged by your orator which application is in the words and figures following:

"CLEVELAND, OHIO, *May 22nd*, 1893.

To the honorable city council of the city of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of the East Cleveland Railroad Company and the Broadway & Newburg Street Railroad Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it, of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective

companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railway Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject, that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate the patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC
RAILWAY COMPANY,
By HORACE E. ANDREWS, *Vice Pres.*"

293 And upon May 29th, 1893, said city council adopted the following resolution:

"Resolved, That the council hereby consents to the consolidation of the East Cleveland Railroad Company, the Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company, under the name of the Cleveland Electric Railway Company, under the following terms and conditions.

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said constituent companies and any line of any other of the said constituent companies within the limits of the city of Cleveland, and passengers on any of such lines paying one fare shall be entitled, without additional or extra charge, to be transferred to any other of said lines and have one continuous ride thereon for said single fare.

The said Cleveland Electric Railway Company shall, within ten days after the adoption of this resolution, file with the city clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be void."

And thereafter, upon the same date, in pursuance of the requirements of said resolution, your orator duly filed with the city clerk its written acceptance of the terms and conditions of the said resolution and its agreement to perform the same; and your orator shows that, ever since said resolution of May 29, 1893, and its acceptance thereof, it has continued the operation of its said various lines of street railway, and has continued to charge only the same cash fare of five

cents for each passenger, in strict compliance with each of the different contracts which each of the said constituent companies had with the city, and which are still in full force. And your orator adopted and put in force the system of transfers contemplated in said council resolution, and has, although not required so to do by the grants and contracts of the East Cleveland Railroad Company, kept on sale and accepted for passage, tickets sold at the rate of eleven for fifty cents or twenty-two for one dollar.

XIV. Your orator further shows that no one of the grants or contracts aforesaid, under which said constituent companies which formed your orator were authorized to operate their various lines of street railway and to charge a cash fare of five cents for each
294 passenger carried thereon, has expired, but your orator alleges the fact to be that each and all of said grants and contracts are in full force and effect.

XV. On July 17th, 1893, your orator, desiring to extend its double-track railway on Prospect street, which at that time ended at Erie street, to Ontario street duly accepted an ordinance of the city of Cleveland authorizing it so to do, in which said ordinance it was provided that your orator, with respect to all the lines of railway which it was operating, should comply with the terms and conditions of the said resolution of said city council passed May 29th, 1893, approving said terms of consolidation, and hereinbefore set forth; and that it should, upon each of said lines, comply with the conditions of said last mentioned ordinance; that the grant so made to your orator has not yet expired, and since said last mentioned agreement your orator has at all times complied with each and all of its requirements. The said ordinance is in the words and figures following, to-wit:

"An ordinance granting the Cleveland Electric Railway Company the right to extend and operate its double-track street railroad in Prospect street, from Erie street to Ontario street, and along certain parts of Seneca, Lake, and Ontario streets.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the Cleveland Electric Railway Company is hereby granted permission to extend its double track street railroad on and along Prospect street, from its present tracks at the intersection of Prospect and Erie streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines on Ontario street; also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets, thence along Sen-
295 eca street to Lake street, and thence along Lake street to Ontario street, and thence along Ontario street to the center of Monument park, connecting with the present tracks in Ontario street; with the necessary connecting tracks, and also poles and overhead wires, and to construct and maintain said extensions and

to operate the same by means of electricity as a motive power, upon the following terms and conditions:

SEC. 2. The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the director of public works, and such poles shall be of such size and shall be set at such places as shall be required by said director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles shall be reset by said company at its own cost. The running of cars on any part of the lines of street railroad of said company may be suspended by the board of control for such period as may at any time be necessary on account of repairs of streets or sewers, or the making of any public improvements, and whenever it may be necessary to have any tracks up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SEC. 3. The said company shall at all times use such precautions for the public safety as the board of control may from time to time require, and shall at all times defend keep harmless, and indemnify the city of Cleveland from and against all lawful claims and demands for any injury to persons or property, costs and expenses to which the city may be subjected or made liable by any proceedings at law or in equity, or otherwise growing out of this grant, or out of the exercise or enjoyment of the same by said company.

SEC. 4. Upon completion of the repaving of Prospect street between Erie and Ontario streets, heretofore ordered by the council, said company shall pay into the city treasury to the credit of the fund for such repaving, a sum equal to the ascertained cost of paving a strip sixteen feet in width and extending from Erie street to Ontario street; and when any of the other streets over which such extension is granted shall be repaved the said company shall pay the cost of paving a strip sixteen feet in width for a double track and seven feet for a single track over the entire length of the same, including street intersections; and it shall keep in constant good order and repair sixteen feet in width along the center of the roadway of each of said streets along the extension herein granted.

SEC. 5. The said company shall comply with and perform all the terms and conditions of the resolution adopted by the city council on the 29th of May, 1893, in reference to the consolidation of the East Cleveland Railroad Company, the Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company, under the name of the Cleveland Electric Railway Company. Upon all its lines of street railway within the city of Cleveland, said company shall place and continue the most approved cars, equipped and furnished with such improvements, equipments and appliances as the council may deem proper for the safety, convenience and comfort of passengers, shall run the said cars in such numbers, at such intervals of time, and under such rules and regulations

as the council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same.

296 The council shall have the right at any time to require said company to operate its cars over the entire length of any of the lines or branches of the said constituent companies, in the same manner and between the same terminals as cars were operated prior to the consolidation of said constituent companies, or any of them, under the name of the Cleveland Electric Railway Company. Whenever required by the council, night cars shall be operated throughout the entire length of each of the lines of said company, at least hourly, each way, between midnight and 6 o'clock a. m. daily. The said company shall also, whenever and as often as may be required by the director of public works, sprinkle between the outer rails of its tracks, including the space commonly known as the devil strip, on all streets and street intersections wherein any tracks on any of the lines of said company are laid, in a manner satisfactory to said director. In consideration of the grant made by this ordinance, said company agrees that all the terms and provisions of this section shall apply to and be a condition upon each and all the grants heretofore made by the council to said constituent companies or either of them, under which the existing lines of street railroad now operated by the Cleveland Electric Railway Company have been constructed.

SEC. 6. This grant shall be in force until the 13th day of July, 1913, but the council reserves and shall at all times have the right to authorize any other individual company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension, upon such terms and conditions as the council may deem just and reasonable, unless such individual company or corporation shall otherwise agree with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

SEC. 7. The said company within ten days after the passage of this ordinance shall pay to the city the cost of publishing the same, and shall file with the city clerk an acceptance in writing of the rights and privileges herein granted, and as soon after such acceptance as the board of control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

SEC. 8. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city relating to street railroads, now or hereafter in force, shall work a forfeiture of this grant, and the rights and privileges thereby granted shall become null and void, upon the adoption of a resolution by the council to that effect. Nothing in this ordinance contained shall be held

to release said company from any of the conditions of any of the grants heretofore made by the city to any of said constituent companies.

SEC. 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 17, 1893."

Thereafter, other and further ordinances have been passed by the city council granting to your orator various extensions of its
297 lines of railway, some of which grants contain the following words, to-wit:

"But with the express condition that no increase of fare shall be charged by said company or any part of its said branch or of its main line or of said extension, by reason of said extension.

This grant is made subject to all ordinances now in force or which may hereafter be duly passed regulating street railroads."

Others contained the following words:

"No additional fare shall be charged any passenger by reason of said extension; and

The rights and privileges herein granted shall be subject to the provisions of the general street railroad ordinances or so much of the same as may be applicable and not inconsistent herewith, and such further and future regulations as may be ordered by the council."

Pursuant to said grants, your orator has constructed the various extensions therein provided for, and has since maintained and operated such extensions in conjunction with its main lines of railway under and by virtue of said grants, having accepted the conditions thereof.

XVI. Your orator shows that no one of the grants under which it is operating its various lines of street railway expires before the year 1910, and it has, by the express provisions of its several contracts with the defendant, The City of Cleveland, the right to so operate its said lines during the periods of said grants, and to charge a cash fare of five cents for each passenger carried, that, before the consolidation of said constituent companies, said East Cleveland Railroad Company was voluntarily selling tickets at the rate of eleven for fifty cents or twenty-two for one dollar, and your orator has sold, and is now so selling, tickets good for passage upon its lines, but your orator says that in no one of the agreements between the city and the said East Cleveland Railroad Company under which it is operating is there any requirement that it shall so sell tickets, or that it shall accept anything but a cash fare of five cents, and there is no provision giving to the city council any right to require your orator to sell tickets at all for
298 passage upon its cars on the lines of the East Cleveland Railroad Company; and your orator shows and alleges that the said city council of the city of Cleveland has no rightful authority

to require of your orator to sell tickets at all for passage upon its cars or to accept anything but a cash fare, so far as the lines formerly operated by the East Cleveland Railroad Company are concerned.

XVII. Your orator further shows that, notwithstanding the provisions of its several contracts with said city of Cleveland, and in direct violation of the same, the defendant, The City of Cleveland, acting by delegated power from the State of Ohio, by the action of its common council on the 17th day of October, 1898, passed an ordinance in the words and figures following, to-wit:

"*Ordinance No.* 22436.

By Mr. Cope.

An ordinance to provide for diminution of the rate of fare under section 6 of an ordinance passed September 15, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland.'

Whereas, the city council of the city of Cleveland on the 15th day of September A. D. 1879, passed an ordinance entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,' by which ordinance the said East Cleveland Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double track street railroad with the necessary switches, turntables, and turnouts, as then maintained and operated, commencing on Superior street to and around the southwest corner of Monumental square, to Euclid avenue, thence through said avenue to Erie street, thence through Erie street to Prospect street, thence through said Prospect street to Case avenue, thence through said Case avenue to Euclid avenue, thence through and along said Euclid avenue to Willson avenue, subject to certain conditions and limiatations as expressed in said ordinance, and

Whereas, as a part of these conditions and limitations it was expressly ordained under section 6 in said ordinance that 'said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages; the council; however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient,' and

Whereas, the council does now deem it justifiable and expedient to diminish the rate of fare, therefore,

299 SECTION 1. Be it ordained by the city council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines and all extensions thereof operated under the aforesaid grant to the said East Cleveland Railroad Company be and is hereby fixed at four (4) cents cash fare over the whole or any part thereof.

SEC. 2. For the better accommodation of the public, any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

That said ordinance has been signed by the mayor of the city and publication of the same has been made, and the said city and its mayor and other officials and members of its common council declare their intention to at once enforce against your orator compliance with the provisions of said ordinance, and that by virtue of the statute in such cases made and provided, said ordinance goes into effect on Tuesday the first day of November, 1898.

XVIII. Your orator further shows that said ordinance of October 17, 1898, so requiring it to carry passengers at a cash fare of four cents and to sell tickets at the rate of seven for twenty-five cents, is in direct violation and contravention of the contract obligations existing between your orator and said defendant, and the contract rights of your orator, in this, that whereas, your orator is entitled, by virtue of said contracts with the said city of Cleveland, to charge upon all of its lines a cash fare of five cents until the expiration of its several grants, the provisions of said ordinance require your orator to accept a cash fare of four cents; and whereas, your orator is not required by any of said contracts made with the East Cleveland Railroad Company by said city to accept anything but a cash fare of five cents, said ordinance requires your orator, as respects the lines formerly operated by the said East Cleveland Railroad Company, to sell tickets, good for passage upon its cars, at the rate
300 of seven tickets for twenty-five cents; and that said ordinance so passed by the city council of the city of Cleveland, if enforced, would impair the contract rights of your orator—in violation of the Constitution of the United States.

XIX. Your orator further shows that the practical effect and operation of said ordinance is to reduce the rate of fare to be received by your orator to the rate of four cents for a cash fare and about 3.57 cents for ticket fares; that said fare of four cents is an unusual and inconvenient rate of fare; that there is no coin of that denomination, and that this fact will tend to increase the number of passengers who will travel upon ticket fare rather than cash; that experience in the operation of street railways has shown that where there is such a difference between ticket and cash fare and at such

low rates, about 70% of passengers carried would use tickets, so that in practical effect, if said ordinance be enforced, your orator would be obliged to carry about 70% of its passengers at the rate of 3.57 cents, and not more than 30% of the passengers carried would pay 4 cents fare; whereby the gross receipts of your orator would be reduced one-fifth, and while its gross earnings would thus be reduced more than one-fifth, its operating expenses would remain the same, as no reduction can be made in the operating expenses by reason of the reduction of fare; that the result of compelling your orator to operate under said ordinance would be to diminish its net receipts at least 50%, which fact will appear by the following statement, which is an accurate statement of your orator's gross and net earnings for the years 1896 and 1897, under the existing rates of fare, and a statement of what such gross and net earnings would have been under the operation of said ordinance of October 17, 1898:

301 In the year 1897 your orator carried 20,735,388 passengers at five cents each.....	$1,036,769.40
13,093,741 passengers at eleven tickets for 50 cents....	595,170.40
Receipts from other passengers.....	84.15
	$1,632,023.95

So that in the year 1897 the rate of fare per passenger was 4.781 cents.

Gross receipts, 1897.....	$1,632,023.95

Assuming that in the year 1897 the rates of fare sought to be fixed by said ordinance of October 17, 1898, had been charged, your orator's receipts would have been:

20,735,388 passengers at 4 cents each.....	$829,415.52	
13,093,741 — at tickets 7 for 25 cents.....	467,633.61	
From other passengers.....	84.15	
		1,297,133.28
A reduction of 20½ %, or.....		$334,890.67
And the average rate of fare per passenger.....		3.80 cents

In order to have made its gross receipts equal under the two ordinances, it would have been obliged to carry in 1897 8,812,912 more passengers than it in fact did carry.

Assuming, as your orator says may fairly be done, that the use of tickets under the proposed ordinance would largely increase, and that at least 70 % of the passengers who ride would purchase tickets, on the assumption that the proposed rates of fare had been charged in 1897, and that 70 % of the passengers who rode did so upon tickets, then the receipts of your orator would have been as follows:

From 10,148,739 passengers at 4 cents each.....	$405,949.56
From 23,680,390 passengers at 7 tickets for 25 cents...	845,728.21
	$1,251,677.77

302 A reduction of 23⅓ % and an average rate of fare per passenger carried of 3.67 cents. And to have earned at this rate the gross receipts of your orator in 1897, it would have been obliged to carry 10,363,654 additional passengers.

Your orator's gross receipts in 1897 were.....	$1,632,023.95
Its ordinary operating expenses.....	1,038,945.49
Its net receipts	$593,078.76

At the rate of fare proposed in said ordinance of October 17, 1898, and assuming that 70 % of the passengers would have bought tickets and 30 % would have paid a cash fare of four cents, the company's gross receipts in 1897 would have been:—

———	$1,251,677.77
Its operating expenses	1,038,945.19
Its net receipts	$212,732.58

That is, for the year 1897, the company would have suffered a loss in income of the difference between $593,078.76, and $212,732.58, namely: $380,346.18, or 64 % of its net income.

The result of the operation of your orator's street railway system in 1896 and 1897, which were the years of largest receipts in the history of street railways in Cleveland, was as follows:

	Gross passenger receipts.	Operating exp. and interest.	Net for improvements, depreciations & dividends.
1896.....	$1,634,841.65	$1,276,179.92	$358,661.73
1897.....	1,632,023.95	1,241,410.90	390,613.05

Your orator further shows that the rate of ticket fare established, or sought to be established, by said ordinance of October 17, 1898, namely, seven tickets for twenty-five cents, is 3.4 cents, or 3.571 per passenger; and your orator shows that this rate is less than the operating expenses and interest charges which it costs your orator to carry per passenger. Your orator's operating expenses and interest charges per passenger in 1896 and 1897 were as follows:

303 1896 ..... 3.73 cents.
1897..... ..... 3.64 cents.

And your orator shows that in the statements above given as to receipts and operating expenses, nothing is included for deprecia-

tion, nor for interest on its capital stock, and nothing by way of a sinking fund which should be allowed by reason of the shortness of the franchises of the company, as hereinafter set forth.

XX. Your orator further shows that, in addition to the expenses and charges entering into the statement of operating expenses, as hereinbefore stated, there is a recognized, actual, and definite annual depreciation in the value of electric railway property of the character of the property of your orator, amounting to from seven to fifteen per cent. per annum, according to the character of the property and material; that is to say, there is each year a depreciation upon the property necessarily in use by your orator from 7% to 15% and in order to provide for this annual depreciation in the value of said property, it is necessary that an annual expenditure, or the setting aside annually of a fund equal to such depreciation, be made.

XXI. Your orator further shows that, among the items of annual expense which have, from the time of the formation of said several companies, requiring great outlays of money and for which your orator can in no way be reimbursed except as it is permitted to operate said properties at a fair and reasonable profit, is the item of street paving; that, under the provisions of most of the grants under which your orator is operating, it is required of the company to pave and keep in repair certain portions of the streets occupied by your orator's tracks, and, during the twenty years last past, your orator shows that it has invested in said street paving, and as a consideration to the city for the grants made to it, in the aggre-
304 gate sum of more than $1,000,000.00.

XXII. Your orator further shows that, under the laws of the State of Ohio, it is not competent for councils of municipal corporations to grant rights to street railways companies for any period of time exceeding twenty-five years, and that all of the grants under which your orator is operating its lines of railway expire in twenty-five years from the time the same were made; that the average time which your orator's several grants have yet to run before the termination thereof is about fourteen years, and that the rights of your orator in the streets upon one of its main lines expire in the year 1910; that at the expiration of such grants, much of the property of your orator will become greatly depreciated in value, and, in fact, much of it will be of but little substantial value except as such value is dependent upon the ability of your orator or its successors to renew such grants; and, as to whether or not such franchises or any of them can be renewed, it is impossible to foretell. Your orator therefore says that as a matter of ordinary business prudence and legal fairness and justice in computing the costs of the operation of said railway properties and the reasonable income which the owners should receive therefrom, there should be provided each year out of the earnings of the company, in addition to its actual outlay for operating expenses and depreciation of its property, a sufficient sum as a sinking fund to retire its bonds and to indemnify the stockholders of the company against loss and impairment of the value

of their stock upon the expiration of said franchises, so far as the value of said stock is dependent upon the continuance of said franchises; and your orator alleges that before it can truthfully be said that your orator is making a profit upon the operation of its road, a sufficient sum should be realized, in addition to the operating expenses, its interest, and the depreciation of the property, to set aside such annual sinking fund to provide for depreciation in the value of its property upon the expiration of its franchises.

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XXIII. And your orator shows and alleges that, based upon the actual experience of your orator in the operation of its said road, that if the said ordinance of October 17th, 1898, were put into operation and your orator compelled to operate its property in compliance with its terms, it would be impracticable and impossible to realize therefrom the actual cost to your orator of maintaining and operating such property, and that there would be left to your orator inadequate means to pay even the actual running expenses. Its bonds would become in default and its property be rendered valueless.

XXIV. Your orator says that there is no certainty that the receipts of your orator, even at the present rate of fare, will be greater in the future than they have been in the past, or that they will even equal the receipts of the past few years; and there is no certain basis upon which to found an opinion that the lower rates of fare provided for in said ordinance of October 17, 1898, would increase travel upon your orator's lines, and to so prophesy is to indulge in pure speculation without any substantial basis of experience upon which to make such an estimate; nor would it be practicable or possible, within the life of your orator's franchises, to have such an increase of travel as would enable your orator, under the provisions of said ordinance to pay its ordinary operating expenses and any interest to the bondholders or profit whatever to the stockholders.

XXV. Your orator further shows that the cost to your orator of said various properties, upon the purchase of the same at the time of said consolidation of the said constituent companies, is represented by your orator's issue of $12,000,000 in stock and the bonded indebtedness at that time assumed, and that, upon such amount, your orator is entitled to earn and receive, in addition to the operating expenses, including a proper allowance for depreciation and the establishment of a sinking fund to cover loss of property upon the expiration of its franchises, such an amount as will pay the interest upon its bonded debt, which averages about 5 % per annum, and such a dividend upon its capital stock as it can earn at the rates of fare provided in said contracts with the city of Cleveland, such rates being, as your orator alleges, fair and reasonable; that, in the commercial markets, at the time of the filing of the original bill herein, your orator's bonds were valued at and above par, while its stock had an established market value of from 75 % to 80 % of its par value, which prices fairly represented, as

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your orator alleges, the value of your orator's investment as the same is valued in the commercial markets for railway securities. Your orator says that very much of its stock and many of its bonds are held by companies and persons and estates, they having purchased the same upon such basis of valuation and upon the faith of the contracts existing between your orator and said city of Cleveland.

XXVI. Your orator alleges that, in ordinary business fairness and legal justice, it is entitled to earn reasonable and fair dividends and returns upon the amount invested in its said railway system, and that, in any event, such returns to your orator, to be reasonable and fair, should not be less than a sum sufficient to provide for the payment of necessary operating expenses, paving, taxes, depreciation, reasonable maintenance and improvements, interest upon bonded and underlying indebtedness, reasonable dividends upon the outstanding stock, and an adequate annual contribution to a sinking fund to provide for the indemnification of the stockholders of said company against the annual depreciation of their property in use, and against the loss or impairment of the value of
307 their stock by the depreciation in the value of said railway property at the expiration of the company's franchises. And your orator alleges that, at the rates of fare fixed by said ordinance of October 17, 1898, its property could not be operated so as to realize for its owners any profit whatever upon the amount which has been actually invested therein.

XXVII. Your orator further shows that the growth of the city of Cleveland, will hereafter from time to time require extensions of the lines of your orator's railway, and new construction and improvements in the operation of the same, and that the expense of operation will necessarily increase with the growth of the city, and that the cost of construction and amount of investment must at the same time increase; that the motors and electrical equipment, as respects most of the cars in use by your orator, have been twice renewed since 1889, so that your orator is now using a third equipment of motors; that many cars which were in use and which were the best made at the time of their purchase and at the time of said consolidation are now obsolete and useless, and upon many of them your orator has not been able to realize above ten per cent. of their cost, while many of them have been discarded as being absolutely worthless, your orator realizing nothing therefrom; that the standard of cars and motors and of rails and other necessary material for the construction and equipment of street railways is constantly changing; that your orator and its predecessors have provided the most improved and modern means of travel, and, in the last eight or nine years of electrical operation, have necessarily made, as above stated, several complete changes in equipment and at great expense; all of which has been done on the faith of the contracts under which said company has operated and the continuance of the rights therein granted to the full terms of the grants; and, in order to maintain

said railway property in a proper state of efficiency and keep
308 pace with growing improvements and invention, it will be necessary to expend large sums in renewals, changes in machinery, cars, and appliances and methods of operation, in addition to the amount already represented by the outstanding stock and bonds of your orator.

XXVIII. Your orator says that the rate of fare which has heretofore prevailed, and which is provided for by your orator's existing ordinances and contracts, is no more than a fair and reasonable charge for the service rendered, and your orator alleges that the number of passengers carried will not be materially increased by virtue of the operation of said ordinance of October 17, 1898, reducing the fare as aforesaid, but that on the contrary, the volume of its business will be materially reduced, and that there will be no compensation whatever to your orator for such reduction of fare by way of increased business.

XXIX. Your orator shows that all of its property was acquired, built, reconstructed, and improved, upon the best obtainable terms and prices and conditions, and that said lines of railway have been at all times, and are now, operated by your orator as economically as practicable, so that the operating expenses have been and are as reasonable and low in amount as they could be made by economical management; that the services of officers and employés of said company have been secured as cheaply as practicable for good service, and it has no more of such officers and employés than are necessary to conduct its business in an efficient and proper manner. Your orator has at all times yielded to public demand for increased and improved service, and, by extending said system throughout various portions of the city, outlying districts and sparsely settled portions thereof, the operation of several lines of your orator's railway while a
great benefit to the city, is and has been carried on at great loss
309 to your orator, greatly increasing the expense of operation of said system, and that the extensive scale upon which your orator is required to operate its said road to meet the demands and requirements of the city and people constantly requires large amounts for improvements and extensions. And your orator alleges that it is now giving, and has at all times during its operation of said railway property given to the people of Cleveland a modern, improved, and well-conducted railway service, and that the prices which it is charging therefor are just and reasonable.

XXX. Your orator further shows that said ordinance of October 17th, 1898, so undertaking to reduce the fare which your orator is entitled to charge as aforesaid, is void, because contrary to and in violation of the Constitution of the United States; that said ordinance, as hereinbefore shown, if enforced or put into operation and effect, does and will deprive your orator of its property as aforesaid without due process of law, and will take, and have the effect of taking the property of your orator for public use without compensation, in contravention and violation of the Constitution of the

United States, and especially section 1 of article 14 of the amendments to the Constitution of the United States.

XXXI. Your orator further shows that, before it could at law demonstrate the invalidity of said ordinance by adjudication upon the same, a multiplicity of suits would ensue, and great inconvenience and conflict and trouble would arise from the refusal of your orator to recognize the validity of said ordinance; that said ordinance will go into effect by its terms on November 1st, 1898, the expiration of ten days' legal publication thereof, unless said city of Cleveland be restrained therefrom by this court; and your orator will be compelled to submit to and carry out said ordinance unless the defendant be so restrained,
310 and that if your orator should refuse to submit to and comply with said ordinance, in the absence of an injunction restraining its enforcement, the city, through its mayor, common council and law department, with their employés and representatives, will, as your orator is informed and believes and alleges, proceed to enforce said ordinance and put the same into immediate effect, and compel your orator to comply therewith *with* by taking steps and measures to forfeit or attempt to forfeit the charter, franchises and privileges so owned by your orator for alleged violation of said ordinance of October 17, 1898, and institute, or cause to be instituted, suits or other proceedings against your orator, its officers, conductors, or agents with the design or putting said ordinance into operation and effect, and of compelling your orator, its officers, conductors, and agents, to accept such cash fare of four cents, and to sell tickets, good for passage upon its cars at the rate of seven for twenty-five cents; and upon your orator's refusal so to do, will make complaints and charges of violation of said ordinance and prosecute and institute proceedings to forfeit the charter, franchises, and privileges of your orator, and to annul its corporate existence, for alleged violation of said ordinance. Your orator says that an attempted enforcement of said ordinance would result in personal conflicts and altercations between passengers and conductors, with consequent breaches of the public peace and arrests and probable disturbance, and that great and permanent loss of business and good-will would follow from such conflicts and disturbances; that a multiplicity of suits would arise on the part of the defendant city and its citizens and passengers on the roads of your orator, in different courts at the same time, and your orator will be put to great expense and trouble and loss in defending suits in various courts, leading to uncertainty or complications as to the rights of the said city of Cleveland
311 and your orator in the premises; that public interest and welfare and the rights of your orator require the trial and adjudication of such rights and duties in one forum, and that in equity and good conscience your orator should not be subjected to the great loss, expense, inconvenience, and damage to which it will be subjected by the enforcement, or attempted enforcement, of said alleged ordinance; and your orator says that it has no adequate

remedy at law to protect itself against the enforcement of said ordinance.

XXXII. In consideration whereof, and inasmuch as your orator is without remedy in the premises at law, and can have adequate relief only in a court of equity, to the end, therefore, that the defendant herein may answer the several matters and things hereinbefore set forth, and that this court may decree that said ordinance of said city, entitled: "An ordinance to provide for a diminution of the rate of fare, under section 6 of an ordinance passed September 15, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, is null and void, and of no effect with respect of your orator, and that said ordinance and the change of fare provided thereby and the provisions thereof are unreasonable, unfair, unconstitutional, and void, your orator prays that the City of Cleveland and the mayor and the common council of said city, and all officers, agents, attorneys, employés, representatives and departments of said city and their respective agents, representatives and employés, and the director of law, of said city and his associates and assistants and agents, and their respective successors in office, be perpetually enjoined, restrained and prohibited from putting said alleged ordinance into effect, and from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding, against your orator or any conductor or employé, or any officer, representative or agents of your orator,
312 the object or purpose of or relief sought by said action, suit or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions; or to compel your orator or any officer, representative, conductor or agent of your orator to accept the cash fare provided for in said ordinance, or to sell tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof; and from instituting or prosecuting any action or proceeding for violation of said alleged ordinance or any part thereof, and from proceeding with or continuing any action or proceeding for violation of said alleged ordinance or any part thereof, whether complaint be made or said action be instituted by or on behalf of said City of Cleveland or any other person; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any fine, penalty or forfeiture for violating said alleged ordinance or any part thereof; and from bringing any suit, action or proceeding for the purpose of vacating the charter or annulling the existence of your orator as a corporation, or the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof, or any of its provisions.

And your orator prays that, in the mean time and during the pendency of this suit, said City of Cleveland, the mayor and common council of said city, and all officers, agents, employés, representatives,

and employés, and the director of law and his assistants, representatives, agents, and employés, be enjoined and restrained as hereinbefore prayed, and that your orator may have such other and further relief as the nature of the case may require and as to equity may appertain.

XXXIII. May it please to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this honorable
313 court, directed to the said defendant, The City of Cleveland, commanding said defendant to appear in this court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

SQUIRE, SANDERS & DEMPSEY &
KLINE, CARR, TOLLES & GOFF,
Counsel and Solicitors.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Fred S. Borton, being duly sworn, says that he is secretary of The Cleveland Electric Railway Company, the complainant in the foregoing amended bill of complaint; that he makes this affidavit as such officer on behalf of the said company; that he has read the said amended bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated upon information and belief, and, as to those matters, he believes them to be true.

FRED S. BORTON.

Sworn to before me by the said Fred S. Borton and by him subscribed in my presence this 4 day of May, A. D. 1900.

[SEAL.] JOHN MACGREGOR, JR.,
Notary Public.

Tax fee 40c.

Endorsements on bill of complaint: No. 5840 The Cleveland Electric Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Amended bill of complaint. Filed May 5, 1900. Irvin Belford, clerk U. S. circuit court N. D. O. Kline, Carr, Tolles & Goff & Squire, Sanders & Dempsey, Cleveland, Ohio.

314 *Answer.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant.
} Answer to Amended Bill of Complaint.

The defendant, The City of Cleveland, now and at all times hereafter, saving and reserving to itself all and all manner of benefit of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto or so much thereof as this defendant is advised, it is material or necessary for it to make answer to, says and avers:

It admits that the complainant, The Cleveland Electric Railway Company, is a citizen of the State of Ohio, and that the defendant, The City of Cleveland, is a municipal corporation of the said State of Ohio and a citizen thereof.

And defendant answering paragraph one of said amended bill, admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the city of Cleveland. This defendant further answering said paragraph one of said amended bill of complaint, admits that the defendant The City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and that in respect to the matters and things set forth in the amended bill of complaint, as to the ordinances affecting the com-
315 plainant, defendant acts and acted under delegated power from the legislature of the State of Ohio, but defendant avers that defendant so acting under such delegated power as aforesaid, could not and did not bind itself by any of the provisions of any of the said ordinances affecting complainant, save and except in so far as defendant had been duly delegated the power by the legislature of the State of Ohio, to so bind itself by such provisions of such ordinances.

Further answering paragraph one of said amended bill, defendant, while admitting that acting or assuming to act under delegated power from the legislature of the State of Ohio, it has passed and adopted ordinances, granting to complainant and to its predecessors in interest, the right to construct and operate various lines of railway in said city, denies that the alleged ordinances set forth and referred to in said amended bill of complaint, constitute contracts between complainant and defendant as in said amended bill of complaint alleged, and defendant denies that all the provisions of each

and all of said alleged ordinances were within the powers of this defendant, delegated to it by the legislature of the State of Ohio, as hereinafter more specifically set forth, and this defendant further answering avers that such provisions of each and all of said alleged ordinances, as were not within the powers of this defendant, so delegated to it by the legislature of the State of Ohio, were and are null and void as against this defendant, and form no part of the contract or contracts between the complainant and this defendant.

Defendant answering paragraph two of said amended bill, admits that the amount in controversy in this action, amounts exclusive of interest and costs, to the sum of five thousand dollars, but denies that this is a controversy arising under the Constitution of the United States. It admits that complainant seeks relief
316 against the defendant by this amended bill, by reason of an attempt on the part of the defendant to enforce against complainant, an ordinance of the city of Cleveland having all the effect and force of a law of the State of Ohio, but this defendant denies that the said ordinance impairs in any way contract rights of complainant, or that the operation of said ordinance, if permitted, would take from complainant its property, or any part thereof, without due process of law, or deny to complainant the equal protection of the law in contravention or violation of the Constitution of the United States, or of section 1 of article 14 of the amendments to said Constitution or section 10 of article 1 of said Constitution, or of any part of said Constitution or of the amendments thereto.

Defendant answering paragraph 3 of said amended bill of complaint, admits that the complainant is a consolidated railway company formed in 1893 by the consolidation of the various constituent companies named in said paragraph 3 of the amended bill. Defendant is not informed, save by the bill of complaint, and the said amended bill of complaint heretofore filed by complainant, as to the amount of capital stock of complainant, or how much thereof is issued, but it denies that the capital stock of complainant is twelve million dollars, and defendant denies that all of the capital stock of complainant or that substantially all of the same is or has been issued; it denies that complainant has outstanding a bonded indebtedness, secured by a mortgage on its property aggregating $3,750,000, or a floating debt of about $250,000.

Defendant denies that said capital stock or bonded indebtedness or floating debt of complainant represent money which has been invested in complainant's property; and defendant alleges that
317 the aggregate amount of said capital stock, bonded indebtedness and floating debt is far in excess of complainant's actual investment in money in its property, and far in excess of the value of its property, either at the present time, or at any time since the organization of complainant, and defendant further says that the said aggregate amount is also far in excess of the value of the property and of the aggregate actual investment of all of the various constituent companies, which in 1893 formed by consoli-

dation, the complainant company. And defendant alleges that a large amount, to-wit: more than two-thirds of complainant's capital stock, bonded indebtedness and floating debt is fictitious and watered, and is not based upon any value whatever, or upon any investment whatever.

Further answering paragraph 3 of said amended bill, defendant admits that as consolidated company, the complainant was formed by a consolidation of the constituent companies named in paragraph 3 of said amended bill; that each of the said constituent companies at the time of and prior to such consolidation, owned and operated street railways in the city of Cleveland under ordinances duly passed by said municipality, the city of Cleveland, acting under authority to it delegated by the legislature of the State of Ohio, and that the ordinances so duly passed were by each of the said companies accepted.

Defendant further admits that by the terms of such consolidation and the force and effect thereof as provided by the statutes of the State of Ohio, in such case made and provided, complainant became and is possessed of all the rights, franchises, privileges and property theretofore possessed by said constituent companies and each of them, but defendant avers that by the terms of such consolidation, and the force and effect thereof, as provided by the statutes of the State of Ohio and the law of the land, complainant succeeded to, assumed, agreed to, and thereby became and is
318 subject to all the duties, obligations, liabilities, conditions, limitations, restrictions and control to which each or any of said constituent companies were and had been subject to, and which were and had been imposed upon them, each of them, or any of them, prior and up to the time of such consolidation.

Defendant answering paragraph 4 of said amended bill admits that each of said constituent companies, so consolidated, was operating its respective lines of street railway under ordinances passed by the city of Cleveland, acting or assuming to act in pursuance of power delegated to it by the legislature of the State of Ohio, but defendant alleges that some of the provisions of some of said ordinances, were not, did not become, and are not binding upon the city of Cleveland for the reason that some of the said provisions of some of the said ordinances were and are beyond the powers delegated by the legislature of the State of Ohio, to said city, and in so far and to that extent, were and are *ultra vires*, illegal and void as against defendant.

Defendant answering paragraph five of said amended bill, admits that the East Cleveland Railroad Company was a corporation which had been in existence and operating lines of street railway in the city of Cleveland since about the year 1859, and that at the time of the said consolidation it owned and operated the several lines of street railway set forth and described in said paragraph five, and defendant is not informed save by said amended bill as to the aggregate mileage of the lines of said East Cleveland Railroad Company

or as to whether or not the said company constructed said lines of railway upon the faith of grants from the city of Cleveland and it therefore denies the allegations in said amended bill in reference thereto, and demands proof thereof.

319 Defendant denies that the city of Cleveland and the said East Cleveland Railroad Company have or had agreed as to that portion of the terms and conditions for the operation by said company of its lines of street railway, relating to the rate of fare to be charged passengers by said East Cleveland Railroad Company for transportation over its lines, except that in and by its various grants, said city had limited said company to a rate of fare not to exceed five cents; but that defendant avers the fact to be that the said city at all times, in and by said grants, expressly, reserved to itself the right, at any time, to reduce or diminish the rate of fare, whenever, in the opinion of the council of the city, it was deemed justifiable and expedient.

Defendant further answering says, that the lines of said East Cleveland railroad traverse the most populous and prosperous portions of the city; that in the territory so traversed complainant and its predecessors in interest the East Cleveland Railroad Company have operated said lines of street railway without competition for the period of about forty years, during all of which time said city has reserved to itself the right to diminish the rate of fare to be charged by complainant, but that such right was not exercised by defendant until the passage of the ordinance of October 17, 1898, herein referred to.

Defendant answering paragraph 6 of said amended bill admits that prior to the 15th day of September, A. D. 1879, the said East Cleveland Railroad Company was operating its main line of railway from the intersection of Superior and Water streets to the easterly limits of the city on Euclid avenue under various separate grants, some of which ran from the city council of defendant, some of which may have been grants by the county commissioners and some of which may have been granted by the authorities of the former village of East Cleveland, as in said amended bill of com-

320 plaint alleged, but defendant denies that the ordinance by which complainant claims were given contract rights to the company for the operation of the road easterly from Willson avenue, contained few restrictions or that the said grants or any of them extended for a period of nearly twenty years from the said 15th day of September, A. D. 1879, but defendant avers that said ordinance contained many and numerous restrictions, and that said grants were at said time, to-wit; September 15, 1879, about to expire.

Defendant admits that on said 15th day of September 1879, the said East Cleveland Railroad Company was charging passengers two fares between Water and Superior streets and the city limits, but as to its right to so charge its passengers and as to each and every other allegation contained in paragraph 6 of said amended bill, which is not herein specifically admitted or denied, defendant does not know

and is not informed save by said amended bill, but does not believe the same to be true, and therefore defendant denies each and every allegation contained in said paragraph 6 not herein specifically denied or admitted to be true.

And further answering paragraphs 6 and 7 of said amended bill, defendant says that under and by virtue of the laws of Ohio and of the State of Ohio and the ordinances of the city of Cleveland, the rights, privileges and franchises of the East Cleveland Railroad Company to maintain and operate its line of railway were limited to expire within certain specified periods of time; that on the date referred to in said bill, towit: September 15, 1879, said rights and franchises over the route described in paragraph 7 of said bill had nearly if not entirely expired, and without an extension or renewal of the period of life of such rights and franchises, the said The East Cleveland Railroad Company, would at or about said date
321 have been compelled to abandon the maintenance and operation of its said lines of street railway and would have been deprived of all the profits and emoluments accruing from the operation and maintenance of the same.

And further answering defendant says, that for the purpose of providing against the consequences of the expiration of its then existing franchises, and for the purpose of avoiding and evading the law of the State of Ohio providing for competitive bidding and granting of franchises to the person or persons or corporation proposing to carry passengers at the lowest rate of fare, said East Cleveland Railroad Company applied to the council of the city of Cleveland for a renewal of its franchise under the provisions of the law of the State of Ohio which provided for a renewal of a street railroad grant or franchise by the council of any city of the first or second grade of the first class, and that on the 15th day of September, 1879, said council granted such renewal by passing the ordinance referred to and set forth in said paragraph 7 of complainant's amended bill, and defendant avers and says that thereafter the said East Cleveland Railroad Company commenced and continued the operation of its lines of street railway under and by virtue of the provisions of said ordinance of September 15, 1879.

Further answering, defendant admits the passage by the council of the city of Cleveland of the ordinance of April 4th, 1883, which said ordinance is set out in paragraph 8 of said amended bill, but denies that said ordinance constituted a contract between complainant and defendant.

Defendant for answer to paragraph 9 of the amended bill says that it denies that by the terms of the said last mentioned ordinances the relations between the city of Cleveland — the East Cleveland Railroad Company were changed as in said paragraph alleged,
322 and defendant alleges that said company had agreed to and was under obligations to run all of its cars as through cars from the westerly terminus of its line to the easterly terminus thereof on Euclid avenue. It admits the passage of the ordinance

of March 15, 1886, but denies that the same constituted a new contract between the city and the said company, as to any portion of its lines; it denies that the obligations imposed on said company by said ordinance were in addition to those existing under former ordinances; it denies that in and by said ordinance, an entirely new agreement, superseding all prior contracts, was made between said city and the said railroad company with respect to the rates of fare which it should charge over its said line from Superior and Water streets to the easterly limits of the city on Euclid avenue, and it denies that the rate of fare was fixed in said ordinance or in any other ordinance.

Defendant further answering says, that at all times after September 20, 1879, the said The East Cleveland Railroad Company was operating its said lines under and by virtue of the ordinance of September 15, 1879, granting it a renewal of franchise, and that neither the ordinance of March 15, 1886, nor any other ordinance either prior *to* subsequent thereto, released or were intended or understood to release said company from any of the provisions and conditions of sections 6, 13 and 14 of said ordinance of September 15, 1879 that neither the ordinance of April 4. 1883 nor the ordinance of March 15, 1886 nor any other ordinance, waived, superseded, affected or diminished the right and power of the city to reduce the rate of fare reserved to it under the provisions of the ordinance of September 15, 1879, and that under and by virtue of the limitations imposed by the law of the State of Ohio, the council of the city of Cleveland had no power to release said company from the operation of any obligation or liabilities imposed by the terms of said ordinance, and any such release is *ultra vires*, illegal and void.

323 Further answering, defendant says that in and by said ordinance, of April 4, 1883, said East Cleveland Railroad Company was granted the right to extend its tracks by building an additional track on Euclid avenue from Willson avenue east to Fairmount street; and that in and by said ordinance of March 15, 1886, said company was granted the right to further extend its tracks on Euclid avenue easterly to the city limits; that under and by virtue thereof said company constructed and operated such additional tracks from Willson avenue easterly to Fairmount street and thence easterly to the city limits as extensions of its line from Superior and Water streets to Willson avenue.

That said company constructed such extensions for its own benefit and profit and sought and solicited the privilege of constructing the same from the council of the defendant, on account of the increased traffic and patronage such extensions would bring to it.

Defendant avers that by virtue of the laws of the State of Ohio, and by the operation of law it became and was the duty of said East Cleveland Railroad Company after the construction of such extensions to give passengers one continuous ride for one fare over the whole of its said line as extended, viz: from the westerly to the easterly terminus

of said company's line, as extended, and *vice versa* and that in so far as the said ordinances undertook to make a contract with the said company that passengers should be carried from one end to the other of said line as extended for one fare, the same was and is entirely without consideration on the part of the city; and defendant avers that giving passengers one continuous ride for one fare, between the points named was no part of the consideration for which said extension grants were given, the same having been provided for by the laws of the State of Ohio.

324 Defendant further says that under and in pursuance of an ordinance passed February 20, 1882, by the council of defendant, what is known as the Cedar Avenue line was constructed by the said The East Cleveland Railroad Company as an extension of its main or Euclid Avenue line under the same conditions and regulated by the same law as to a continuous ride from one end to the other of said company's line, as extended, as said first named extensions were made, and that said ordinance so passed February 20, 1882, as aforesaid, was in the words and figures following, to wit:

"An ordinance to permit the East Cleveland Railroad Company to extend its line of railway on Hayward street and Cedar avenue from Hayward street to Fairmount street.

SECTION 1. Be it ordained by the city council of the city of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend its line of railway from the present track at the intersection of Prospect street and Hayward street southerly on and along said Hayward street to Cedar avenue, thence easterly on and along said Cedar avenue to Fairmount street, and to equip and operate said extension as a single track railway, with all necessary switches and turn-outs, in connection with its main line, and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension, so that but one fare shall be charged between the eastern terminus of said extension and the western terminus of its main line: Provided, that that part of said extension extending from the intersection of Prospect street and Hayward street to Giddings avenue shall be completed and in operation within six months after the passage of this ordinance, and that the balance of said extension, extending from said Giddings avenue to Fairmount street, shall be completed and in operation on or before the 1st day of June, 1883, also further provided, that when the right of way shall be granted from the intersection of said Hayward street, westerly on and along said Cedar avenue, and on and along Perry street from Cedar avenue to Prospect street, that said railroad company shall remove its track on Hayward street and build said track on and along said Cedar avenue and Perry street to the intersection of said Prospect street, there to connect with its main line, said re-

moval and further extension to be constructed within sixty days after the passage of the proper ordinances and under the direction of the board of improvements.

SEC. 2. This grant is made subject to all ordinances of said city council of the city of Cleveland now in force or which may hereafter be duly passed providing for the construction, operation and government of street railroads.

SEC. 3. That this ordinance shall be in force from and after its passage and legal publication."

325 Defendant for answer to paragraph 10 of said amended bill admits that prior to July, 1888, the lines of railway of the said The East Cleveland Railroad Company had been operated by horse power and that on July 13, 1888, the city council of defendant passed the ordinance set out in said paragraph 10 of said amended bill, but defendant denies that the privileges of constructing the electric system and the operation of said lines thereby was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure the same.

Defendant further answering admits that in and by said ordinance it was provided that the right to operate said lines should be extended for the period of twenty-five years from the date thereof; but it says that the council of the city of Cleveland was without power, at the most to make said extension beyond September 20, 1904, being the date of the expiration of the renewal grant of September 15, 1879, hereinbefore referred to.

Further answering defendant says that by the terms of the said ordinance of July 13, 1888, the question of the rate of fare to be charged by the said The East Cleveland Railroad Company was remitted to the ordinance then in force, governing the same, viz: the ordinance of September 15, 1879.

Defendant says that said ordinance of July 13, 1888, did not and does not fix the rate of fare, and did not and does not waive or surrender the right of the city to decrease the rate of fare which right was reserved to it under said ordinance of September 15, 1879, and that the council of said city had no power to waive or surrender such right, but defendant avers that by the law of the State of Ohio, the said city council was expressly forbidden to so waive or surrender such right or to waive or surrender any right belonging to the said city of Cleveland.

326 Defendant further answering said paragraph 10 of said amend bill says, that prior to July 13, 1883, the said The East Cleveland Railroad Company was exceedingly desirous of changing the street car service upon its lines from animal power to electric motive power, for the reason, among others, that the operation of such lines by electricity instead of animal power, would be less expensive and that the said company would make a large saving thereby and would be able to furnish service to the citizens of the city of Cleveland at a much less expense thereby greatly increasing

its profits; that the operation of said lines by electricity would be the means of providing a more rapid mode of transit and enable said company to carry more people in a shorter space of time, and at less expense, and thereby increase the patronage and profit of said company; and inasmuch as the ordinances under which said company was then operating its lines of street railway permitted only the use of animal motive power said company solicited from the council of said city the passage of the ordinance set out in the amended bill of complaint authorizing it to use electricity as a motive power, and thereupon in pursuance of such solicitation and without any consideration therefor, the council of the city adopted said ordinance granting to said company the right and license to equip and operate said lines with electricity and to erect the necessary poles, wires and equipments for the purpose of generating and using such electricity.

For answer to paragraph 11 of said amended bill defendant admits the construction of the Wade Park Avenue line under the ordinance of the city of Cleveland which said ordinance is set out in said paragraph 11 of the amended bill but defendant denies that the rate of fare was fixed in and by said ordinance, or that the
327 city's right to reduce the rate of fare was waived, surrendered or affected by said ordinance.

Defendant says that said Wade Park Avenue line was constructed as, and was in fact, an extension of said company's main or Euclid Avenue line, and that giving passengers a continuous ride from one end of said company's line to the other as extended by either the Wade Park Avenue extension or the Cedar Avenue extension, or by any other extension, for one fare, was no part of the consideration for or on account of which said extensions were granted or constructed, the same having resulted by operation of law from the granting the right to construct and from the construction of said extensions.

Defendant further says that each and every one of the ordinances hereinbefore referred to provide expressly that the East Cleveland Railroad Company shall comply with all the provisions of the general ordinances of the city of Cleveland regulating the construction, operation and maintenance of street railroads, with all amendments thereto, and that said company shall abide by and perform the further and future ordinances and orders of the council of said city; and that said provision entered into and became a part of each and every grant made by the city to said company.

Defendant for answer to paragraph 12 of said amended bill admits that prior to and on May 29th, 1893, the said East Cleveland Railroad Company, the Broadway and Newburgh Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company were engaged in the operation of their respective lines of road in various and different parts of the city of Cleveland and that each and all of them were charging a cash fare of five cents over their respective lines of street railroad, but this defendant denies that they or any one of them were author-

ized to charge said cash fare of five cents, in such manner, or
328 to such extent, that the council of the city did not have the right to reduce said rate of fare.

Defendant denies that their right or that the right of any of them to charge said cash fare of five cents was fixed by the terms of their respective alleged contracts and agreements with the city, and defendant alleges that said right was not then, or at any time prior thereto fixed. Defendant denies that there was not at any time — at all times as respects to any one of said constituent companies, power in the council of the city of Cleveland in any manner to compel said companies, or any one of them during the existence of their respective grants to reduce the cash fare to be charged by the said companies, or either one of them, below a cash fare of five cents; but on the contrary this defendant avers that there was at all times power in the council of the city of Cleveland to compel said companies, or any one of them, during the existence of their respective grants, to reduce the cash fare charged by said companies, or either of them, below a cash fare of five cents.

Defendant admits that each of said constituent companies operated its line of railway as an independent line, and that no system of transfers (except between the South Side and Brooklyn lines) from the lines of one of said roads to the lines of the other, had been adopted by said companies but defendant denies each any every other allegation contained in said paragraph 12 not herein specifically admitted or denied.

For answer to paragraph 13 of said amended bill this defendant admits that the said constituent companies did on or about April 11, 1893, enter into an agreement of consolidation in conformity to the statutes of Ohio authorizing them so to do, and formed by such consolidation the complainant company; and that by virtue
329 thereof the complainant company at once became possessed of and vested with all and singular the property, rights, franchises, and privileges of each and all of said constituent companies.

But defendant alleges that said complainant company upon said consolidation, assumed, became and was, subject to all the duties, liabilities, conditions, limitations, restrictions, and obligations imposed upon, or to which each and all of the said constituent companies had been subject prior to and at the time of such consolidation.

Defendant admits that said complainant addressed to the council of the city of Cleveland the application contained in said paragraph 13 of said amended bill, but defendant is not informed, save by said bill, as to the intention of complainant in making such application to the council; and it therefore denies that it was the intention of complainant to give to the public in the city any privilege not required by said complainant by the terms of its grant hereinbefore referred to, and demands proof thereof.

Defendant admits that upon said application being made to and filed with the council of said city, said council thereupon adopted

the resolution set forth in paragraph 13 of complainant's amended bill, and defendant admits that thereafter in pursuance of the requirements of said resolution complainant duly filed with the city clerk its written acceptance of the terms of said resolution and its agreement to perform the same; and that ever since it has continued the operation of its said various lines of street railway, and has continued to charge a cash fare of five cents for each passenger, but defendant denies that such charge of a cash fare of five cents for each passenger was in strict compliance with each or any of the different contracts which each of the said constituent companies are alleged to have had with the city and which are alleged to be in full force to such extent that the city of Cleveland did not
330 at all times have the right to diminish or reduce said rate of fare at any time, which said right defendant avers that it at all times had. Defendant admits that complainant adopted and put in force a system of transfers, but defendant denies each and every other allegation contained in said paragraph 13 of said amended bill not herein specifically and expressly admitted or denied.

And further answering defendant says and avers that the complainant company by reason of its organization in pursuance of an act of the legislature of the State of Ohio became and was and now is, by reason of the laws of Ohio, charged with the duty of giving to passengers one continuous ride over all such consolidated lines for one fare, not to exceed the maximum fare charged over any one of said lines prior to such consolidation, and that the application of complainant to the council of the city of Cleveland and the resolution adopted by the council of the city of Cleveland, herein referred to, neither enlarged nor diminished the rights, privileges, duties, or liabilities or either the complainant company or the city of Cleveland. That the adoption of said resolution was and is wholly without consideration moving to said city of Cleveland.

And defendant further says that the right of the city to reduce or diminish the rate or rates of fare over any or all of the complainant's lines of railway was not affected or waived by the resolution hereinbefore referred to, or by any other resolution, orders, ordinances, or acts of the council of said city.

Defendant for answer to paragraph 14 of said amended bill admits that whatever grants or ordinances the constituent companies, which formed complainant, were operating their various lines of railway by reason of, at the time of the consolidation, are still in force.
331 Defendant denies that by said grant said constituent companies were authorized to charge a cash fare of five cents for each passenger carried, as alleged in said amended bill, but defendant says that the city of Cleveland had at that time, and always has had the right to reduce or diminish the rate of fare on said constituent companies' lines below five cents.

For answer to paragraph 15 of said amended bill defendant admits the passage of the ordinance by the council of the city of Cleveland as set out in said paragraph 15 of said amended bill.

Defendant further admits the passage of other and further ordinances, containing the words and in the language as set out in said paragraph 15. And defendant further admits that pursuant to said grant complainant constructed various extensions as alleged in said paragraph 15, and has since maintained and operated such extensions as alleged in said paragraph 15.

Defendant for answer to paragraph 16 of the amended bill denies that no one of the grants under which complainant is operating its various lines of street railway expires before the year 1910, but defendant avers that the grants under which it is now operating the lines of street railway formerly operated by the East Cleveland Railroad Company, expire on or about September 20, 1904. Defendant denies that the complainant has the right to operate its lines during the period of these grants, or during any part of such period, and to charge a cash fare of five cents for each passenger carried.

Defendant admits that prior to the consolidation, the East Cleveland Railroad Company was selling tickets at the rate of eleven for fifty cents, or twenty-two for one dollar, but denies that said company was so selling such tickets voluntarily.

332 Defendant avers that for a period of a few months immediately preceding such consolidation, said company was selling tickets at the rate of six for twenty-five cents.

It admits that the complainant has sold tickets good for passage upon its lines; and it alleges that under and by virtue of the provisions of the various ordinances under which complainant is operating its respective lines, the council of the city of Cleveland has a right to compel complainant to sell tickets good for passage upon its cars over the former lines of the East Cleveland Railroad Company; and that the city has a lawful right and authority to require complainant to sell tickets good for passage upon its cars; and particularly so with reference to the lines formerly operated by the East Cleveland Railroad Company.

Defendant for answer to paragraph 17 of the amended bill admits the passage by the council of ordinance number 22436, by Mr. Cope, on the 17th day of October, 1898; and admits that in passing said ordinance the council of the city of Cleveland acted by delegated power from the State of Ohio; but defendant denies that said ordinance was in violation of the several contracts or of any contract between the city of Cleveland and complainant and its predecessor in interest, the East Cleveland Railroad Company, or that it was in violation of any right under or by virtue of any contract or ordinance between said parties.

Defendant admits that said amended bill contains a correct copy of said ordinance; admits the signing, publication thereof, and the intention of the mayor and other officials of the city of Cleveland to enforce compliance with the provisions of the same against complainant, and that the said ordinance went into effect on Tuesday, November 1st, 1898.

Defendant for answer to paragraph 18 of complainant's amended

bill, denies that said ordinance of October 17, 1898, in so
333 requiring complainant to carry passengers at the rate of seven for twenty-five cents is in violation or contravention of any contract right or obligation existing between complainant and defendant, and defendant denies that the enforcement of said ordinance would in any way whatever impair any contract right of complainant, secured to complainant by the Constitution of the United States, or otherwise, and defendant denies each and every allegation in said paragraph 18 contained not herein expressly and specifically denied or admitted to be true.

Defendant for answer to paragraph 19 of said amended bill admits, that the practical effect and operation of said ordinance of October 17, 1898, is to reduce the rate of fare to be received by complainant on the lines affected by said ordinance to the rate of four cents for a cash fare and about 3.57 cents for a ticket fare. It admits that there is no coin of the denomination of four cents; and defendant says that it does not know what experience in the operation of street railroads has shown as to the number of per cent. of passengers who use tickets under such difference between cash and ticket fare as is proposed by said ordinance of October 17, 1898, but defendant says on its information and belief it denies that under such conditions about 70 % of the passengers carried use tickets, but defendant avers that it is informed and believes that under such difference between a cash fare and a ticket fare as is proposed by said ordinance, experience has shown that no more than 40 % of the passengers carried would use tickets. As to the statements contained in said paragraph 19 as to the number of passengers carried by complainant during the year 1897, and as to the number of passengers who paid cash fare, and as to the number of passengers who paid ticket fare, defendant is not informed save by said amended bill, and therefore denies said statements and demands proof thereof.

334 Defendant denies that in order to have made its gross receipts equal under the two ordinances, it would have been obliged to carry 8,812,912, more passengers than it did in fact carry, or any number approaching such number.

Defendant denies that it may be fairly assumed, or that the fact would be that the use of tickets under the proposed ordinance would largely increase, or that at least 70% of the passengers who would ride would purchase tickets, or that more than 40% of said passengers would so purchase tickets, and defendant denies each and every allegation contained in said paragraph 20, not herein expressly and specifically denied or admitted to be true.

For answer to paragraph 21 of complainant's amended bill defendant admits that under the provisions of some of the grants under which complainant is operating, it is required to pave and keep in repair certain portions of certain streets occupied by its tracks; but defendant denies that during the last twenty years complainant has invested in said street paving the sum of one mil-

lion dollars, or any amount approaching said sum; and defendant denies each and every allegation contained in paragraph 21 of said amended bill, not herein specifically denied or admitted to be true.

And further answering defendant avers that whatever paving has been done by complainant and its predecessors, was done for the benefit of complainant and said predecessors, such paving being confined to the space occupied by and between and adjacent to the rails and tracks of their respective lines of railway. That the operation of such railway involves considerable wear and tear on the pavement and street and said companies were only required to do and only in fact did, such paving as was necessary owing to the added wear and tear thereof resulting from the operation of their lines of railway.

335 And for answer to the matters and things set forth in paragraph 22 of complainant's amended bill, defendant admits that under the laws of the State of Ohio it is not competent for councils of municipal corporations to grant rights to street railroad companies for any period of time exceeding twenty-five years. And defendant denies each and every allegation contained in paragraph 22 of said amended bill not hereinbefore expressly admitted or denied.

And defendant further denies each and every allegation and statement contained in paragraphs 23, 24, 25, 26, 27, 28, and 29 of complainant's amended bill, not herein specifically denied or admitted to be true.

Defendant for answer to paragraph 30 of said amended bill, denies that said ordinance of October 17, 1898 is void, or that the said ordinance is contrary to, or in violation of the Constitution of the United States, or that the said ordinance if enforced or put into operation and effect, does or would deprive complainant of its property or any part thereof, without due process of law, or that the enforcement of said ordinance would take or have the effect of taking the property of complainant or any part thereof for public use or for any other use or purpose, without compensation or otherwise, either in contravention or violation of the Constitution of the United States, or of section 1 of article 14 of the amendments to said Constitution, or in contravention or violation of any part of said Constitution, or of any of the amendments thereto, or in any way or manner whatsoever.

Further answering the various matters and things set forth in complainant's amended bill defendant says, that it is not informed save by said amended bill as to the present market value of complainant's stock; but says that the aggregate amount of such capital stock at the market value alleged in complainant's amended bill is largely in excess of the actual money invested by complain-

336 ant in its property, and that the same is largely in excess of the actual value of said complainant's property; that a large proportion of the capital stock of complainant company, towit: more than two-thirds thereof, and a large proportion of the bonds is-

sued by it are fictitious and represent no value whatever; that the same is not based or issued, either upon the actual money investment of complainant, or upon the actual value of complainant's property.

And defendant avers that at all times during the issuance, sale and distribution of complainant's capital stock, and the sale of its said bonds, the council of the city of Cleveland had full and complete right and authority to reduce and diminish the rate of fare to be charged by complainant over its respective lines of railway, and had the further right to compel said company to sell tickets and accept the same for passage over its said lines; and it denies each and every allegation contained in the amended bill to the effect that the purchasers of said stock and bonds purchased the same upon the faith of contracts to the effect that the city would not and could not reduce said rate of fare.

This defendant further answering says, that in the control, and management of its business and property the complainant has been guilty of gross mismanagement and extravagance, that it has employed and maintained a large corps of officers at extravagant salaries, and has used a part of its income for political and other purposes, inconsistent with its charter and its rights under the ordinances of the city of Cleveland, thereby greatly increasing its annual expenditures.

This defendant expressly denies that the fare or rate of fare fixed by said ordinance of October 17, 1898, is unfair, unjust, un-
337 reasonable or confiscatory, and defendant alleges and avers that said fare or rate of fare, would if put into effect by the complainant, prove to be sufficient to enable said complainant to pay all the expenses of operating and maintaining its lines of railway, pay all its fixed charges and earn a fair and reasonable compensation upon all moneys invested in its street railway system.

And further answering defendant denies that any annual provision should be set aside for any so-called depreciation in the value of the property of the complainant company, and alleges that any and all of the depreciation of the property of the complainant is fully met and provided for by way of repairs and replacements from time to time, and from year to year, and is included in the annual expenses of complainant, and that complainant's property and equipment is kept fully intact, and its standard of efficiency and value maintained by the repairs and replacements which take place necessarily from the operation of its lines of railway, and defendant denies that a sinking fund should be created and set aside out of the earning of said company to indemnify the stockholders of said company against the loss or expiration of its franchise; and avers that on the contrary, inasmuch as the stockholders of said company and of the several street railway companies, which, by consolidation, formed the complainant company, well knew, or ought to have known at the time of the purchase of their stock, that the duration of the ordinances or licenses under which said companies operated

their street railways in the city of Cleveland *were* limited, and had or would cease or terminate at a certain specified time, and made their investment accordingly, there is no reason, justice or equity which would require the making of setting aside of such provision or fund.

And as to the allegations of that part of complainant's amended bill, referring to the future growth of the city of Cleveland,
338 defendant says, that there is no duty or obligation upon the part of the complainant company to construct and operate extensions of its lines so as to keep pace with such growth; nor is there any duty or legal obligation on the part of the city of Cleveland to permit complainant company to so construct and operate such extensions.

And further answering defendant says, that for the last forty years, during which complainant and its predecessors in interest have operated their lines of street railway in the city of Cleveland, said city has increased in population from forty-three thousand in 1859, to nearly four hundred thousand at the present time. That said growth has been gradual and continuous, and that during all that time the complainant company and its predecessors in interest have solicited from the council of the city of Cleveland the privilege of extending its lines from time to time so as to secure the added patronage and increase of business attending such growth of population, for the purpose, and with the result, of increasing its annual profits from the operation of its railway systems.

That the territory contiguous and adjacent to the complainant's lines and particularly the territory contiguous and adjacent to the line of the East Cleveland Railroad Company, has year by year become more densely populated; that the increase in the territorial limits of said city during said period of time has not kept pace with the city's growth in population; that the increase in street railway traffic and patronage resulting from such increase in population has exceeded the relative increase in the number of lines or extension of lines of railway made necessary by reason of such increased traffic and business and that this condition applies particularly to the lines of street railway formerly operated by the East Cleveland Railroad Company for the reason that the population of that portion of the city traversed by such lines has within said period of time,
339 increased in density of population in a much larger and greater proportion than it has in extent of territory, so that in order to accommodate such increased traffic and business it has not been necessary for the complainant, or its predecessors in interest, to construct, nor have they constructed, new lines of railway or extensions of lines in proportion to the extent of its increase in traffic and business.

That during all this period the city through its council, has been liberal in its grants to said company and its predecessors in interest, having made such grants wholly without cost or compensation, and under circumstances enabling said railway companies to secure the

same without competing with other parties as to the rate of fare, and further more, the extensions granted to the East Cleveland Railroad Company, particularly, were granted at such times and over such roads as to enable the said The East Cleveland Railroad Company to enjoy a virtual monopoly of the street railway business in that part of the city of Cleveland traversed by its lines. That having thus liberally dealt with and favored the said complainant, and its predecessors in interest, and particularly, the East Cleveland Railroad Company, for a period of forty years, defendant says that in justice, equity and good conscience, the council of the city of Cleveland, on the 17th day of October, 1898, exercised the right reserved to it, to reduce the rate of fare upon that portion of complainant's lines to which the ordinances of said date applies.

And further answering defendant says, that the practical operation of putting into effect the said ordinance of October 17th, 1898, will be to increase the business and patronage of the lines affected by said ordinance; that the reduced rate of fare therein pro-
340 vided for will be an inducement for many more persons to patronize the street cars on said lines than have heretofore patronized the same; that additional patronage and traffic resulting thereby will substantially make up for any loss suffered by complainant in the reduction of the rate of fare; and this without at the same time increasing to any material extent the expense of operating said lines.

Defendant further answering says, that the cost of constructing, equipping and operating electric street railways in the city of Cleveland and elsewhere at the present time is much less than it was at the time when electricity as a motive power for street railway operation came into general use; and much less than it was when the same as adopted by complainant's predecessors in interest.

And further answering defendant alleges that from the time the East Cleveland Railroad Company changed its system from horse power to electric motive power until the present time, there has been a gradual and substantial decrease in the cost of all street railway equipment, including rails, ties, poles, wires, motors, car bodies and other machinery, equipment and appliances used in operating electric street railways; and with such decreased cost has also come a corresponding improvement in the durability and adaptability of such appliances and equipment.

That for these reasons electric street railways can be constructed, maintained and operated at the present time, at a greatly reduced expense and cost as compared with the conditions heretofore existing.

And further answering defendant, avers that the complainant, The Cleveland Electric Railway Company, is at present operating 99 miles of street railway in the city of Cleveland; that nearly all the same is a double track road and wholly operated by electricity as the motive power. That the ordinance of October 17th, 1898, hereinbe-
341 fore referred to does not affect all of complainant's lines of railway, but as stated in said ordinance, it applies only to such

lines of railway as are operated under and in pursuance of the renewal grants therein recited. That the lines to which it applies are those lines known as the Euclid Avenue line, the Wade Park Avenue line, and the Cedar Avenue line; that the total mileage of the said lines so affected by said ordinance is 28¼ miles, leaving 71¾ miles of complainant's lines of railway to which said ordinance does not apply.

Defendant avers that neither the gross receipts, the net receipts, nor the expenses of operating any of complainant's lines of railway will be affected by the operation of said ordinance of October 17, 1898, except that portion thereof known as the Euclid Avenue, Wade Park Avenue, and Cedar Avenue lines above referred to; and that said lines constitute only 28½ per cent. of complainant's total or aggregate lines of railway in the city of Cleveland, leaving 71½ per cent. of its said lines of railway wholly unaffected by said ordinance as to gross receipts, expenses and net receipts.

Defendant avers that the traffic and business on each of complainant's various lines of railway and the gross receipts, the expenses and the net receipts are substantially in proportion to the number of miles of each particular line of railway; that is to say, the income from the expense of operating each separate line is substantially the same for the same or an equal number of miles of track. Defendant says that the alleged reduction on complainant's net receipts of 64 per cent. resulting from the operation of said ordinance of October 17, 1898, is not only fictitious and erroneous, but is based upon the supposition that the reduction of fare applies to each and every
342 one of complainant's lines of street railway; that is to say, it is calculated on a basis of a four cent cash fare, and a 3.57 cent ticket fare, for all of complainant's lines of railway.

Therefore, defendant says, that the operation of said Euclid Avenue, Wade Park Avenue and Cedar Avenue lines at a four cent cash fare and a 3.57 cent ticket fare, as provided in said ordinance, will enable complainant to pay all its operating expenses, fixed charges and a fair and reasonable profit on the money actually invested in its property and on the actual value of its property, leaving a large surplus in addition thereto, and that said ordinance is in its terms just and reasonable.

Defendant further answering says, that complainant's receipts and net income, revenue and profit from carrying passengers is not its only source of income, revenue and profit. That in addition to its income from carrying passengers said company has derived, and is deriving, an income and revenue from carrying United States mail, express matter and other packages, goods and merchandise, and an income and revenue from furnishing electric light, heat and power to various citizens, and for various purposes in the city of Cleveland, and from letting advertising space in and upon its street cars, and from certain agreements and beneficial arrangements and contracts entered into between the complainant and various electric

railroad companies, operating suburban electric railways within the city of Cleveland, and from various other sources.

Defendant says that it is not informed as to the exact amount of the income and profits received by complainant from these several sources of revenue, but it avers that the income from such sources is not less than $150,000 per annum.

Defendant further says that during the years which said company may in the future, under present ordinances, operate
343 its lines of railway in said city, that it is only fair to assume and presume that said city will continue to grow as it has for many years past, and that such continued growth will greatly add to the business and profits of said complainant company.

Further answering defendant denies, that before complainant could at law demonstrate the invalidity of said ordinance by adjudication, a multiplicity of suits would ensue, or that great inconvenience, conflict or trouble would arise as alleged in paragraph 31 of complainant's amended bill, but defendant admits that said ordinance by its terms went into effect November 1st, 1898.

Defendant further answering the matters and things contained in paragraph 31, or so much thereof as it is advised is material, says, that it does not know and is not informed save by said complainant's bill and amended bill, as to the matters and things therein contained, except that this defendant avers that it was and is the intention of the city of Cleveland to carry into effect and enforce the provisions of said ordinance, according to the true intent and meaning thereof, unless restrained by the order of some court of competent jurisdiction in the premises, and it therefore on its belief denies each and every allegation therein not herein specifically admitted or denied, and demands proof thereof.

And this defendant avers and contends that this court has no jurisdiction in this cause, among other reasons, for this, that the complainant has a complete and adequate remedy at law; that the subject matter of this cause does not properly come within the jurisdiction of a court of equity, and is one appropriately and properly within the jurisdiction of a court of law.

That the matter in dispute does not arise under the laws or
344 Constitution of the United States, and that said cause does not present and is not a controversy between citizens of different States, but is a controversy between citizens of the same State, viz: between the said complainant, The Cleveland Electric Railway Company, and the said defendant, The City of Cleveland, who are both citizens of the State of Ohio.

And this defendant avers that any other matter, cause or thing in said amended bill contained, material or necessary to make answer to, and not herein well and sufficiently answered, confessed, traversed, avoided or denied, is not true to the knowledge and belief of this defendant; and defendant denies each and every allegation in said amended bill of complaint contained, not hereinbefore specifically admitted or denied; all of which matters

and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall order and direct, and this defendant denies that complainant is entitled to the relief, or any part thereof, in said amended bill demanded, and prays to be hence dismissed with its costs.

T. H. HOGSETT,
BEACOM, EXCELL & GAGE,
Solicitors and Attorneys for Defendant.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Matthew B. Excell, being duly sworn says that he is assistant corporation counsel of the defendant, The City of Cleveland, a municipal corporation, and one of the attorneys for defendant in this action, that he makes this affidavit as such assistant corporation counsel and as such attorney, in behalf of the said City of Cleveland; that he has read the foregoing answer to the amended bill of complaint and knows the contents thereof; that each and every allegation contained in said answer is true to his own knowledge,
345 except as to the matters therein stated upon information and belief, and as to those matters, he believes them to be true.

MATTHEW B. EXCELL.

Sworn to before me by the said Matthew B. Excell, and by him subscribed in my presence this 5 day of May, A. D. 1900.

[SEAL.] JACOB M. CRAWFORD,
Notary Public.

Endorsements on answer: No. 5840. United States circuit court northern district of Ohio, eastern division. The Cleveland Electric Railway Company, complainant, *vs.* The City of Cleveland, defendant. Answer to amended bill of complaint. Filed May 5 1900 Irvin Belford, clerk, U. S. circuit court, N. D. O. T. H. Hogsett, Beacom, Excell & Gage, attorneys and solicitors for defendant.

346 *Order of Continuance.*

April Term, A. D. 1900, to-wit, October 1, 1900.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO. } 5840. Chancery.
vs.
THE CITY OF CLEVELAND. }

This cause is continued to the next term of this court.

Order of Continuance.

October Term, A. D. 1900, to-wit, February 2, A. D. 1901.

Present: Hon. Francis J. Wing, U. S. district judge.

THE CLEVELAND ELECTRIC RY. CO.
vs.
THE CITY OF CLEVELAND. } 5840. Chancery.

This cause is continued to the next term of this court.

Notice of Application for Decree.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND CITY RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } In Equity. No. 5839.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant. } In Equity. No. 5840.

The defendant, City of Cleveland, will take notice that on February 5th, at two o'clock, p. m. the complainants will make application to the court for a decree upon the amended bill and amended answer in these causes. Copies of the motion and decree to be asked for are submitted herewith.

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SQUIRE, SANDERS & DEMPSEY,
Counsel for Complainants.

Service of the above notice is hereby acknowledged this 4th day of February, 1901.

T. H. HOGSETT,
Counsel for Defendant.

Endorsements on notice: No. 5839–5840. The Cleveland City Ry. Co. The Cleveland Electric Ry. Co. plaintiffs *vs.* The City of Cleveland, defendant. Notice. Filed Feb. 5 1901, Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

Cause Submitted on Pleadings.

February Term, A. D. 1901, to-wit, February 5th, A. D. 1901.

Present: Honorable Francis J. Wing, and Augustus J. Ricks, United States district judges.

THE CLEVELAND ELECTRIC RAILWAY CO. *vs.* THE CITY OF CLEVELAND. } 5840. Chancery.

This day came the solicitors of the respective parties and submit this cause to the court upon the pleadings and leave is given to the solicitors for the defendant to file their brief herein by March 1st, 1901.

348 *Replication.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } No. 5840. Replication.

This replicant, The Cleveland Electric Railway Company, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, The City of Cleveland, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

Endorsements on replication: No. 5840. The Cleveland Electric Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Replication. Filed Mar. 2 1901 Irvin Belford, clerk U. S. circuit court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

349 *Motion.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant.
} Motion.

The above-named complainant, The Cleveland Electric Railway Company, now comes and moves the court to enter final decree in its favor as prayed for in the amended bill of complaint herein, adjudging the ordinance in said amended bill of complaint described entitled: "An ordinance to provide for diminution of the rate of fare under section 6 of an ordinance passed September 15th, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, to be null and void, and of no effect, in that, as appears by the amended bill of complaint and the admissions of the amended answer herein, said ordinance is in violation of the contract obligations existing between the complainant and the defendant herein, and impairs the contract rights of the complainant, in violation of the Constitution of the United States.

Complainant further shows that, upon the amended bill, amended answer, and replication, it is entitled to the decree without a determination of any of the matters in respect to which issues are raised by the amended answer of the defendant herein.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

350 Endorsements on motion: No. 5840. The Cleveland Electric Railway Company, plaintiff, *vs.* The City of Cleveland, defendant. Motion. Filed Mar. 5, 1901 Irvin Belford, clerk, U. S. circuit court, N. D. O. Squire, Sanders & Sempsey, Cleveland, Ohio.

351 *Opinion of Court and Order for Final Decree.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Plaintiff,
vs.
THE CITY OF CLEVELAND, Defendant.
} In Equity. No. 5840.

An application was made sometime ago in this case for a preliminary injunction, and the same was heard upon the pleadings, exhibits and evidence relating thereto.

The hearing involved the validity of certain ordinances passed by the city council of the city of Cleveland, assuming power to prescribe the rates of fare to be charged to passengers upon its street railways, and other questions, presented by the record.

Upon the issues so made, a full hearing was had, and the application was allowed, for reasons fully set forth in an opinion of the court published in the 94th Federal Reporter, page 385 to which reference is now made.

Since that opinion was filed, the pleadings have been so amended that the questions already passed upon now appear upon the face of the bill and answer.

At this stage of the pleadings the complainant moves for a final decree on the face of the pleadings adjudging the ordinances in question to be void as impairing existing contract rights.

The court has reëxamined upon this motion the record as hereinbefore stated together with an additional brief filed by counsel for the city, and the opinion hereinbefore rendered, and being still satisfied that the former ruling was right, and adhering to the
352 same, it follows that the complainant is entitled to a decree as claimed in its motion.

A final decree may therefore be entered upon the issues made upon the face of the bill and answer and replication, and without passing upon any other question at issue under the pleadings.

AUGUSTUS J. RICKS,
U. S. Dist. Judge.

Endorsements on opinion: No. 5839. The Cleveland Electric R'way Co., plaintiff, *vs.* The City of Cleveland, defendant. Opinion of court and order for final decree. Filed Mar. 11 1901 Irvin Belford, clerk, U. S. circuit court, N. D. O.

353 *Decree.*

February Term, A. D. 1901, to-wit, March 11th, 1901.

Present: The Honorable Francis J. Wing, U. S. district judge.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND. } 5840. Chancery.

This day this cause came on to be heard upon the motion of the complainant for a decree upon the amended bill, amended answer, and replication, and was argued by counsel.

Whereupon the court finds:—

That, by the admissions of the amended answer, or the ordinance pleaded herein, it appears that the ordinance complained of in the amended bill of complaint is a law of the State of Ohio impairing the obligations of contracts existing between the complainant and the defendant, and said motion is therefore granted.

And the said cause coming on for further hearing upon the amended bill, amended answer, and replication, being argued by counsel, and the court being fully advised in the premises,—

It is ordered, adjudged and decreed that, upon the facts admitted by the amended answer, the complainant is entitled to a decree adjudging the ordinance of the city of Cleveland, passed October 17th, 1898, to be null and void, as a law impairing the obligations of contracts existing between the complainant and the defendant, as appears in said amended bill of complaint and amended answer, and that, for a final disposition of this cause, it is unnecessary for the court to determine the other issues arising upon said amended bill, amended answer, and replication as to whether said ordinance complained of is unreasonable, and whether its enforcement would be, as alleged by the complainant, the taking of its property without due process of law.

354 It is therefore further ordered, adjudged and decreed that the ordinance of the city of Cleveland referred to in said amended bill of complaint herein and entitled: "An ordinance to provide for a diminution of the rate of fare under section 6 of an ordinance passed September 15th, 1879, entitled: 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,'" passed October 17th, 1898, is null and void; and the City of Cleveland, and the mayor and common council of said city, and all officers, agents, attorneys, employés, representatives departments of said city and their respective agents, representatives, and employés, and the director of law of said city and his associates and assistants, and their respective suc-

cessors in office, be, and they are hereby, perpetually enjoined, restrained, and prohibited from putting said alleged ordinance into effect, or attempting so to do; and from instituting or authorizing or directing any suit or suits, action or actions, or any proceedings against the complainant or any conductor or employé, or any officer, representative or agent of the complainant, the object or purpose of, or relief sought by, said action, suit, or proceeding being to put said alleged ordinance into effect or to enforce any of its provisions, or to compel the complainant or any officer, representative, conductor, or agent of it to accept the cash fare provided for in said ordinance or to sell tickets as therein provided; and from making complaint for violation of said ordinance or any part thereof, and from instituting or prosecuting any action or proceeding for violation of said alleged ordinance or any part thereof, whether complaint be made or said action be instituted by or in behalf of said City of Cleveland or any other person; and from instituting, directing, authorizing, or asking leave to institute or proceed with any suit, act, or proceeding for the recovery of any fine, penalty, or forfeiture for violation of said alleged ordinance or any part thereof;
355 and from bringing any suit, action, or proceeding for the purpose of vacating the charter or annulling the existence of the complainant as a corporation, or for the forfeiture of any of its privileges or franchises because or on account of the violation of said alleged ordinance or any part thereof or any of its provisions.

It is further ordered and adjudged that the defendant, The City of Cleveland, pay the costs of this action, taxes at — dollars, for which execution is awarded.

(Signed) AUGUSTUS J. RICKS,
U. S. Dist. Judge, N. D. O.

356 *Notice of Appeal by Defendant.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant. } Notice of Appeal by Def't.

To the Cleveland Electric Railway Company and Squire, Sanders & Dempsey, its solicitors and counsellors:

You are hereby notified that The City of Cleveland, defendant in theabove-entitled cause, intends to and hereby does appeal from the final decree of the circuit court of the United States in and for the northern district of Ohio, eastern division, entered in the above

entitled action on the 11th day of March, A. D. 1901, to the Supreme Court of the United States.

Dated at Cleveland, the 2nd day of March, 1903.

BAKER, PAYER, GAGE AND CAREY,
Solicitors and Attorneys for Def't.

Service of a copy of within notice of appeal acknowledged this 2nd day of March, 1903.

SQUIRE, SANDERS & DEMPSEY,
Solicitors and Counselors for Complainant.

Endorsements on notice: No. 5840. In the circuit court of the United States, northern district of Ohio, eastern division. The Cleveland Electric Ry. Co. complainant *vs.* The City of Cleveland, defendant, Notice of appeal by defendant. Filed Mar. 2 1903, Irvin Belford, clerk, U. S. circuit court, N. D. O. Baker, Payer, Gage & Carey, solicitors and att'ys for def't.

357 *Petition on Appeal.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF CLEVELAND, Defendant.	No. 5840. In Equity. Petition on Appeal.

The City of Cleveland, a municipal corporation, the above-named defendant, conceiving itself aggrieved by the order and decree made and entered in the above-entitled cause on the 11th day of March, anno Domini 1901, wherein and whereby it was ordered, adjudged and decreed that—an ordinance of the city of Cleveland, passed October 17, 1898, and entitled: "An ordinance to provide for a diminution of the rate of fare, under section 6 of an ordinance passed September 15, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland.'" is null and void, and the City of Cleveland, all of its officers, agents and employees be perpetually enjoined and prohibited from effectuating said ordinance or attempting so to do or predicating any action thereon, and that the defendant, The City of Cleveland, pay the costs of said action—does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said decree was made,

duly authenticated, may be sent to the Supreme Court of the United States.

Dated 2nd day of March, 1903.

BAKER, PAYER, GAGE AND CAREY,
Solicitors and Att'ys for Def't.

358 Endorsements on petition on appeal: No. 5840. In the circuit court of the United States, northern district of Ohio, eastern division. The Cleveland Electric Ry. Co., complainant, *vs.* The City of Cleveland, defendant. In equity. Petition on appeal. Filed Mar. 2, 1903 Irvin Belford, clerk, U. S. circuit court, N. D. O. Baker, Payer, Gage & Carey, solicitors & att'ys for def't.

359 *Assignment of Errors on Appeal.*

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant.
} In Equity. Assignment of Errors on Appeal.

Now, on the 2nd day of March, anno Domini 1903, comes the defendant, The City of Cleveland, a municipal corporation, by Baker, Payer, Gage & Carey, its solicitors and attorneys, and says that the decree in the above-entitled cause is erroneous and against the just rights of said defendant, and files the following assignment of errors, upon which it intends to rely and to urge in the prosecution of the appeal from the decree made by this honorable court on the 11th day of March, A. D. 1901, in the above-entitled cause.

It says that the said court erred in making and entering its said decree granting a permanent injunction and adjudging the costs against this defendant, for the following reasons:

1. That the said court did not have jurisdiction of the defendant, The City of Cleveland.

2. That said court did not have jurisdiction of the subject-matter presented by said cause.

3. That said court erred in granting the motion of the complainant therein, and in rendering, making and entering a decree upon the amended bill, amended answer and replication.

4. That said court erred in adjudging and decreeing the following ordinance of the city of Cleveland passed October 17, 1898, to be null and void, to-wit:

"*Ordinance No.* 22436.

By Mr. Cope.

An ordinance to provide for diminution of the rate of fare under section 6 of an ordinance passed September 15, 1879, entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland.'

360 Whereas, the city council of the city of Cleveland, on the 15th day of September, A. D. 1879, passed an ordinance entitled 'An ordinance granting a renewal of franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,' by which ordinance the said East Cleveland Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double track street railroad, with the necessary switches, turntables and turnouts, as then maintained and operated, commencing on Superior street to and around the southwest corner of Monumental square to Euclid avenue, thence through said avenue to Erie street, thence through Erie street to Prospect street, thence through said Prospect street to Case avenue, thence through said Case avenue to Euclid avenue, thence through and along said Euclid avenue to Willson avenue, subject to certain conditions and limitations as expressed in said ordinance; and

Whereas, as a part of these conditions and limitations it was expressly ordained under section 6 in said ordinance, that 'said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient;' and

Whereas, the council does now deem it justifiable and expedient to diminish the rate of fare, therefore,

SECTION 1. Be it ordained by the city council of the city of Cleveland that the rate of fare for a single continuous passage over the lines and all extensions thereof operated under the aforesaid grant to the said East Cleveland Railroad Company be and is hereby fixed at four (4) cents cash fare over the whole or any part thereof.

SEC. 2. For the better accommodation of the public, any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets, for twenty-five cents.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

5. That said court manifestly erred in finding, decreeing and adjudging the said ordinance complained of in the amended bill of the complainant, to be a law of the State of Ohio impairing the obligations of contracts existing between the complainant and defendant.

6. That said court erred in adjudging and decreeing said ordinance to be null and void as impairing the obligation of any contract existing between the complainant and defendant, and as conflicting with section 10, of article 1 of the Constitution of the United States.

361 7. That the allegations in the pleadings and the admitted facts show affirmatively and without contradiction that the defendant had not by said ordinance complained of in bill of complainant, or otherwise, impaired any obligation created by any contract existing between complainant and defendant.

8. That there was no evidence adduced by or on behalf of the complainant whereby it appeared or could have appeared that said ordinance impaired any contractual obligation existing between the complainant and defendant; and that there was no admission made by the defendant in that regard.

9. That no evidence was adduced or could have been adduced to show that any contractual right of the complainant or contractual obligation of the defendant created by any ordinance or ordinances, resolution or resolutions theretofore passed or adopted by the city council of the city of Cleveland was or were annulled or impaired by the ordinance constituting the gravamen of complainant's cause.

10. That the allegations in the pleadings and the admitted facts show affirmatively and without contradiction that the enforcement of said ordinance would not constitute a taking of property without due process of *lse* and would not contravene or violate section 1 of article 14 of the amendments to the Constitution of the United States.

11. That no evidence was adduced or could have been adduced to show that any property of the complainant would by the operation or effectuation of said ordinance have been taken from the complainant by the defendant without due process of law.

12. That said court erred in excluding from its consideration and refusing to entertain evidence showing that said ordinance in practical operation would not reduce the gross receipts or the net profits or increase the operating expenses of said complainant.

13. That said court erred in excluding from its consideration and refusing to entertain evidence showing that the rate of fare in and by said ordinance fixed was reasonable and that the regulations therein established were reasonable.

14. That there was no evidence adduced by the complainant or admission made by the defendant that any ordinance or ordinances passed by the city council of the city of Cleveland invested the complainant with the right to maintain a fixed and unchangeable

charge for either cash or ticket fare as respects the line or lines affected by said ordinance.

15. That said court erred in adjudging and decreeing that The City of Cleveland, defendant therein, had not the right to regulate the rate of fare as undertaken in the ordinance complained of in the bill of complaint.

16. That said court erred in adjudging and decreeing that the defendant had not specifically reserved the right and the authority to regulate the rate of fare as undertaken in the ordinance complained of in the bill of complaint and in such manner as defendant might deem justifiable and expedient.

362 17. That said court erred in adjudging and decreeing that the City of Cleveland relinquished or surrendered or could have relinquished or surrendered any rights then existing or theretofore established as respects the regulation of the rate of fare charged by the complainant on the lines and streets affected by said ordinance, by the passage on May 29, 1893 of the following resolution:

"Resolved, That the council hereby consents to the consolidation of the East Cleveland Railroad Company, the Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company, and the South Side Street Railroad Company, under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said constituent companies and any line of any other of the said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, with- additional or extra charge, to be transferred to any other of said lines and have one continuous ride thereon for said single fare.

The said Cleveland Electric Railway Company shall, within ten days after the adoption of this resolution, file with the city clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be void."

18. That said court erred in adjudging and decreeing that by any of the ordinances or resolutions set forth in complainant's amended bill of complaint, *and* complainant was invested with any right divesting the defendant of the power to alter the rate of fare as undertaken in the ordinance set forth and complained of in said bill of complaint.

19. That said court erred in adjudging and decreeing that the defendant, The City of Cleveland, by or through its city council, or any of its agents, at any time or in any manner, relinquished or surrendered or could have lawfully or legally or properly relinquished or surrendered any right to regulate or establish the rate of cash or ticket fare as undertaken in the ordinance complained of in the bill of complaint and herein fully set forth.

Wherefore in order that the foregoing assignment of errors may

be and appear of record, the defendant presents the same to the court and prays that such disposition be made thereof as will be in accordance with law and the statutes of the United States in such cases made and provided; and defendant prays that the said decree be reversed and that said court may be directed to enter a decree and judgment for the defendant and appellant.

BAKER, PAYER, GAGE & CAREY,
Solicitors and Attorneys for Def't.

363 Endorsements on assignment of errors: No. 5840. In the circuit court of the U. S. northern district of Ohio, eastern division. The Cleveland Elec. Ry. Co., complainant, *vs.* The City of Cleveland, defendant. In equity. Assignment of errors, on appeal. Filed Mar. 2, 1903. Irvin Belford, clerk, U. S. circuit court, N. D. O. Baker, Payer, Gage & Carey, solicitors & att'ys for def'ts.

364 February Term, A. D. 1903, to wit, March 2, 1903.

Present: Honorable Francis J. Wing, U. S. district judge.

THE CLEVELAND ELECTRIC RAILWAY Company *vs.* THE CITY OF CLEVELAND, Defendant.	5840. In Equity. Order Allowing Appeal.

The defendant, The City of Cleveland, a municipal corporation, considering itself aggrieved by the decree and order herein granted and entered on the 11th day of March anno Domini, 1901, comes now and presents to the court its petition for an allowance of an appeal to the Supreme Court of the United States, together with an assignment of errors, setting out separately and particularly each error asserted and intended to be urged in its behalf.

In consideration whereof it is ordered that the said petition on appeal is granted and the claim of appeal therein made be and is hereby allowed to the Supreme Court of the United States from the decree and order made and entered March 11th, 1901, granting a permanent injunction and adjudging the costs against the defendant herein; and it is further ordered that the amount of bond upon said appeal be and hereby is fixed at the sum of $500.00 conditioned for the payment of the costs by the defendant in case it does not make good its plea as provided by law; and that an authenticated transcript of the record and proceedings and papers upon which said decree was rendered in this court be forthwith transmitted, duly certified and verified, to the said Supreme Court of the United States according to law in such cases made and provided.

Done in open court this 2 day of March, 1903.

FRANCIS J. WING, *Judge.*

365 *Bond on Appeal.*

Know all men by these presents, that we The City of Cleveland as principal, and J. P. Madigan, and Newton D. Baker as sureties, are held and firmly bound unto The Cleveland Electric Railway Company in the full and just sum of five hundred dollars to be paid to the said The Cleveland Electric Railway Company, its certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of March in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a circuit court of the United States for the northern district of Ohio, eastern division, in a suit depending in said court, between The Cleveland Electric Railway Company, complainant, and The City of Cleveland, defendant a decree was rendered against the said The City of Cleveland and the said The City of Cleveland having obtained an order of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Cleveland Electric Railway Company citing and admonishing it to be and appear at the United States Supreme Court at the city of Washington, D. C., on the 2nd day of April next.

Now, the condition of the above obligation is such, that if the said The City of Cleveland shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CITY OF CLEVELAND, [SEAL.]
By BAKER, PAYER, GAGE & CAREY.
J. P. MADAGAN. [SEAL.]
NEWTON D. BAKER. [SEAL.]

Sealed and delivered in presence of

V. J. WAGNER.
PATRICK R. FINN.

Approved by

FRANCIS J. WING, *Judge.*

366 Endorsements on bond on appeal: No. 5840. The Cleve-
land Electric Railway Company, *v.* The City of Cleveland.
Bond on appeal to the United States Supreme Court. Filed Mar. 3
1903 Irvin Belford, clerk, U. S. circuit court, N. D. O.

367 *Præcipe for Transcript.*

The city of Cleveland, department of law.

Newton D. Baker, corporation counsel.
H. F. Payer, Benj. A. Gage, W. A. Carey, assistants.
C. J. Estep, special counsel.

MARCH 13, 1903.

Irvin Belford, Esq., clerk U. S. circuit court, city.

DEAR SIR: In the cause of The Cleveland Electric Railway Co. *vs.* The City of Cleveland, numbered 5840 in the records of the circuit court of the United States, for the northern district of Ohio in the eastern division, recently appealed by the defendant to the United States Supreme Court, kindly transmit under your hand and seal, to the Supreme Court of the United States a *complete*, authenticated transcript of the record containing the process, pleadings, motions rulings, and opinions of the court thereon, the final decree and order, finding of facts and opinion of the court, all affidavits, depositions and evidence therein, notice of appeal, petition for allowance of appeal, assignment of errors, bond on appeal citation, admission of service and entry of appearance and such other orders memoranda, papers, exhibits, and proceedings had in said cause as may be necessary and are rerequired by law, so that the said cause and the *whole* record therein, together with a copy of the opinion or opinions rendered and filed, may go up on appeal for the consideration of the Supreme Court of the United States.

BAKER, PAYER, ADDAMS & CAREY,
Att'ys for City of Cleveland, Appellant.

Endorsements on præcipe: 5840 The Cleveland Electric Ry. Co. *v.* The City of Cleveland. Præcipe for transcript. Filed Mar. 14, 1903. Irvin Belford, clerk, U. S. circuit court, N. D. O.

368 In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND, Defendant.
} No. 5840. In Equity. Citation to Appellee.

THE UNITED STATES OF AMERICA, *ss:*

To the Cleveland Electric Railway Company and Squire, Sanders & Dempsey, its solicitors and counselors, Greeting:

Whereas the City of Cleveland has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the northern district of Ohio in the eastern division, made and entered in favor of you, and

Whereas said The City of Cleveland has duly filed the security required by law;

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America at Washington, D. C., on the second day of April next, to wit, April 2nd, A. D. 1903, pursuant to an order allowing an appeal duly entered and recorded in the office of the clerk of the circuit court of the United States for the northern district of Ohio in the eastern division, in that certain action numbered 5840, in which The Cleveland Electric Railway Company is complainant, and The City of Cleveland is defendant and
369 appellant, to show cause if any there be why the decree rendered and entered against said defendant and appellant, *and* mentioned in said appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Cleveland in the northern district of Ohio, eastern division, this 3rd day of March in the year of our Lord one thousand nine hundred and three.

FRANCIS J. WING, *Judge.*

Due personal service of the within citation and receipt of copy thereof is hereby admitted and accepted, and the appearance of the appellee in the Supreme Court of the United States is hereby entered this 3rd day of March 1903.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors and Counselors for Appellees.

370 *Certificate of Clerk.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY Company
vs.
THE CITY OF CLEVELAND.
} No. 5840. Chancery.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States in and for said district, do hereby certify that the annexed and foregoing pages contain a full and true copy of the final record, including the petition for appeal, assignment of errors and all proceedings in said cause; and there *is* embraced in such record, true copies of the opinions of the court, the affidavits and exhibits therein filed, the originals of all of which remain in my custody as clerk of said court.

There is also attached to and transmitted with said record, the citation issued and allowed herein.

Seal of the Circuit Court, Northern Dist. of Ohio.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at Cleveland, Ohio, in said district, on this 21" day of March, A. D. 1902, and in the 127th year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
By B. C. MILLER,
Deputy Clerk.

Endorsed on cover: File No. 18,888. N. Ohio C. C. U. S. Term No. 256. The City of Cleveland, appellant, *vs.* The Cleveland Electric Railway Company. Filed April 9th, 1903.

Supreme Court of the United States.

No. 255.

THE CITY OF CLEVELAND,

APPELLANT,

vs.

THE CLEVELAND CITY RAILWAY COMPANY,

APPELLEE.

No. 256.

THE CITY OF CLEVELAND,

APPELLANT,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLEE.

Brief for Appellant.

D. C. WESTENHAVER and
NEWTON D. BAKER,
Counsel for Appellant.

Supreme Court of the United States.

No. 255.

THE CITY OF CLEVELAND,

APPELLANT,

vs.

THE CLEVELAND CITY RAILWAY COMPANY,

APPELLEE.

No. 256.

THE CITY OF CLEVELAND,

APPELLANT,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLEE.

Brief for Appellant.

These two cases are nearly alike on facts and identical in the questions of law presented for decision. In the Court below they were argued together as one case; the district judge, who rendered the decrees appealed from filed one finding of fact and one opinion in both — for these reasons the appellant asks that they be heard and argued together here.

STATEMENT.

The decrees appealed from were rendered on the 11th day of March, 1901 (No. 255 Record, page 200; No. 256

Record, page 232); the decrees are rendered on the amended bills, answers, and general replications, and declared null and void two separate ordinances of the City of Cleveland as being laws of the State of Ohio impairing contractual obligations between the City of Cleveland and the respective plaintiffs in each suit. They award perpetual injunctions against the enforcement of the ordinances in questions.

In case No. 255 the ordinance so declared to be null and void was passed on the 17th day of October 1898 and is known as the "Hopkins Ordinance." It is set forth in full in the amended bill, Record 255, page 158, and is as follows:

ORDINANCE 22437.

Ordinance No. 22437—An Ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the City of Cleveland."

Whereas, The City Council did, on the 25th day of August, 1879, pass an ordinance entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain, and operate its street railroad in and through certain streets of the city of Cleveland," by which ordinance said Kinsman Street Railroad Company, its successors and assigns, were authorized to reconstruct, maintain, and operate its double track street railroad, commencing on Superior street at the intersection of Water street; thence to and around the south-west corner of Monumental Square to Ontario street; thence through Ontario street to and through a portion of Broadway street to Woodland avenue

(formerly Kinsman street); thence through said avenue to Madison avenue, subject to certain conditions and limitations; and

Whereas, is was ordained, as part of those conditions and limitations (section 7), that "said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the Council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient; and

Whereas, The Council does now deem justifiable and expedient a diminution of the rate of fare, therefore,

Section 1. Be it ordained by the City Council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines and all extensions thereof, operated under the aforesaid grant to the said Kinsman Street Railroad Company, be and is hereby fixed at four (4) cents each fare over the whole or any part thereof.

Sec. 2. For the better accommodation of the public any person, company or corporation operating said line of railway under said grant shall at all times keep on sale, on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

Sec. 3. This ordinance shall take effect and be in force and after its passage and legal publication.

Passed October 17, 1898.

GEO. H. BILLMAN,
President of the Council.

HOWARD H. BURGESS,
City Clerk.

Approved by the Mayor October 20, 1898.

The ordinance referred to therein renewing the franchise of the Kinsman Street Railroad Company is also set forth in full in the amended bill. (Record 255, pages 141 to 145). It grants a renewal for a term of twenty-five years from and after the 20th day of August, 1879, on certain terms and conditions, of the franchises of the company operating that street railroad. This renewal was made in pursuance of legislative authority which will be hereafter cited authorizing the same "upon such conditions as they (the City Council of Cleveland) may consider conducive to the public interests." The conditions contained in the ordinance impose numerous burdens on the railway company, but the one relevant to this controversy is section 7, which is as follows: Record 255, page 143:

> "Sec. 7. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the Council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient."

In case No. 256 the ordinance declared to be null and void was also passed on the 17th day of October 1898 and is known as the "Cope Ordinance." Except as to the necessary variation in recitals in the preambles, it is the same as the "Hopkins Ordinance," and is set forth in full in the amended bill (Record 256, page 197). It recites a renewal grant of the franchise of The East Cleveland Railway Company made on the 15th day of September in the year 1879, made pursuant to the same legislative authority. The ordinance renewing the franchise of the last-named company is found in the record (Record 256, pages 177-181). This ordinance is substantially similar to the ordinance granting the

franchise to The Kinsman Street Railway Company drawn in controversy in Case No. 255 and contains the same terms and conditions. Section 6 of this ordinance is as follows:

> "Sec. 6. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient."

The statute law of the State of Ohio by which the power was conferred upon the City of Cleveland to grant original franchises to street railway companies and to renew the same; in fact all the power directly conferred by the legislature on municipal corporations to grant or renew franchises for street railway companies, or to regulate the conduct of the same, or the fares to be charged thereon, are contained in Sections 2501 and 2502 of the Revised Statutes. They are as follows:

> Sec. 2501. (*Terms and conditions of construction and operation to be fixed by council; renewal of grant.*) No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest.
>
> Sec. 2502. (*Proceedings to establish a street railroad route; grant not valid for more than twenty-five years.*) Nothing mentioned in the next preced-

ing section shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council, except upon the recommendation of the board of public works in cities having such a board, and of the board of improvements in other municipalities having such a board; and no ordinance for the purpose specified in said preceding section shall be passed until public notice of the application therefor has been given by the clerk of the corporation in one or more of the daily papers, if there be such, and if not then in one or more weekly papers published in the corporation, for the period of at least three consecutive weeks; and no such grant as mentioned in said preceding section shall be made, except to the corporation, individual or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property-holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant or renewal of any grant for the construction or operation of any street railroad, shall be valid for a greater period than twenty-five years from the date of such grant or renewal, except in cities of the second grade of the second class, in which no grant or renewal of any grant for the construction or operation of any street railroad, shall be valid for a greater period than fifty years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant.

Both of these sections were in force throughout the period during which the several ordinances drawn in controversy in this litigation were passed. Several other sections of the Revised Statutes in reference to the burdens which a municipality may impose, and the terms on which extensions may be permitted, or consolidations of existing companies made, become relevant in the consideration of these cases. They are as follows:

> Sec. 2504. (*Pavement of streets where railroads are constructed; proviso.*) The council may require any part or all of the track, between the rails of any street railroad constructed within the corporate limits, to be paved with stone, gravel, boulders or the Nicholson or other wooden or asphaltic pavement, as may be deemed proper, but without the corporate limits, paving between the rails with stone, boulders or the Nicholson, or other wooden or asphaltic pavement shall not be required; provided, that in cities of the second grade of the first class, the council may require of any street railroad company to pave and keep in constant repair, sixteen feet for a double track or seven feet for a single track, all of which pavement shall be of the same material as the balance of the street is paved with.
>
> Sec. 2505. (*Council of city or village may grant extension of street railroad.*) The council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, any street railroad, to extend their track, subject to the provisions of section three thousand four hundred and thirty-seven, three thousand four hundred and thirty-eight, three thousand four hundred and thirty-nine, three thousand four hundred and forty, three thousand four hundred and forty-one, three thousand four hundred and forty-two, and three thousand four hun-

dred and forty-three, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws shall not be increased by reason of such existing tension or consolidation.

Sec. 2505-b. (*Consolidation.*) Wherever the lines or authorized lines of road of any street railroad corporations or companies meet or intersect, or whenever any such line of any street railroad corporation or company, and that of any inclined plane railway or railroad company or corporation, or any railroad operated by electricity or other means of rapid transit may be conveniently connected, to be operated to mutual advantage, such corporations or companies, or any two or more of them, are hereby authorized to consolidate themselves into a single corporation; or whenever a line of road of any street railroad company or corporation organized in this state is made, or is in process of construction to the boundary line of the state, or to any point either within or without the state, such corporation or company may consolidate its capital stock with the capital stock of any corporation or company, or corporations or companies in an adjoining state, the line or lines of whose road or roads have been made or are in process of construction to the same point or points, in the same manner and with the same effect as provided for the consolidation of railroad companies in sections 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391 and 3392 of the Revised Statutes, and any and all acts amendatory and supplementary to said sections and each of them; and the said sections including these so amended and supplemented, are adopted and made a part of this section.

Sec. 3443. (*Council etc., may fix terms and conditions.*) Council, or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such railways may be constructed, operated, extended, and consolidated.

(3443-12.) Sec. 5. (*Consolidation.*) Such street railroad companies may consolidate on the terms and conditions applicable to the consolidation of railroad companies; provided, however, no increase of fare shall be allowed on any street railroad route by reason of such consolidation.

It will be noted that the council of any city must consent to the extension of existing lines, but such consent is not required in the event of a consolidation involving no extension of tracks, and in either event the legislature imposes the restriction that there shall be no increase of fare for carrying passengers over the extended or consolidated lines.

The powers of control over the streets given by the legislature to municipalities are contained in Section 2640 of the Revised Statutes, which is as follows:

Sec. 2640. (*Council to have control of streets, etc.*) The council shall have the care, supervision and control of all public highways, streets, avenues, alleys, sidewalks, public grounds, and bridges, within the corporation, and shall cause the same to be kept open and in repair, and free from nuisance.

After the enactment of the Hopkins and Cope ordinances on October 17, 1898 the appellees in these two cases, The Cleveland City Railway Company and The Cleveland Electric Railway Company filed their respective bills in equity in the Circuit Court of the United States for the Northern

District of Ohio. As both the complainants were and are citizens of the State of Ohio the jurisdiction of the Circuit Court was based on the assumption that these two ordinances were passed in pursuance of authority delegated by the legislature of the State and were therefore in effect laws of the State of Ohio, and that the rate of fare fixed by these ordinances for the carrying of passengers was unreasonably low and thereby deprived the railway company of property without due process of law in violation of section 1 of the 14th amendment of the Constitution of the United States and also that they impaired the obligation of contracts previously made between the City of Cleveland and these two companies. The facts relied upon to show the contracts which it is contended were impaired will be set forth hereafter more in detail.

Answers were filed to each of these bills and on the hearing of the application for a preliminary injunction many affidavits were read. A preliminary injunction was awarded on the ground that these ordinances impaired the obligation of contracts; the other ground was not passed on by the Court, on the contrary it expressly declined so to do. As already stated, the Court filed the same finding of facts and opinion in both cases.

Afterwards in order to present more clearly and definitely the question decided by the Court in awarding the preliminary injunctions, the plaintiffs below filed the amended bills already referred to, in which the ordinances were pleaded at length which were relied on as creating contracts; answers and replications were filed, and the final decrees made from which these appeals are being prosecuted. There was no evidence submitted at this final hearing. As a result all the proceedings in both cases prior to the respective amended bills are unimportant and irrelevant here except as to the Court's

finding of facts and opinion and these are assigned as the reasons for the final decrees.

In case No. 255 it is admitted that the ordinance of August 25, 1879 in granting the renewal of the franchise of The Kinsman Street Railroad Company and in fixing the conditions upon which it was renewed, reserved or contracted for the right in the city, thereafter to regulate fares; but this right it is contended was subsequently surrendered and new contracts made whereby the city abandoned the rights reserved by it in the ordinance of August 25, 1879; that is, new contracts giving to the railway company the right to charge a fare higher than that fixed in the Hopkins ordinance. These subsequent ordinances, relied upon to support this contention, are set forth in the amended bill, (Record 255. pages 139-169).

The property and franchises of The Kinsman Street Railroad Company were acquired sometime subsequent to August 25, 1879 by The Woodland Avenue Railway Company. This railway was operated on the east side of the Cuyahoga River which separates what is known as the east from the west side of the City of Cleveland.

The West Side Street Railroad Company which was operated on the west side of said River was consolidated in 1885 with The Woodland Avenue Railway Company under the name of The Woodland Avenue and West Side Street Railroad Company. This consolidation was made in pursuance of the statutes already quoted and by operation of law the new company succeeded to all the rights and privileges and became subject to all the liabilities and duties of the constituent companies. The franchise of The West Side Street Railroad Company is also a renewal grant, and was granted by ordinance

passed June 5, 1882. (Record 255, pages 146-147). The appellee asserts and the judge of the Court below finds that this ordinance gave the company the right to charge a cash fare of five cents for each passenger carried, but the fact is that the ordinance is entirely silent on the subject of the rate of fare or the right of the city to regulate the same.

On May 14, 1883 and before the consolidation which formed The Woodland Avenue and West Side Street Railroad Company permission was given by the City Council to The Woodland Avenue Railway Company to extend its line on and along Woodland Avenue to Corwin Street (Record 255, page 148). It is also contended that this ordinance operates as a new contract conferring the right to charge a single fare of five cents over the entire line of which the extension granted by it is a part; that is over the lines covered by the Kinsman Street franchises as well as the extension thereby authorized and in effect if not in express terms cancelled the right of regulation stipulated for in the Kinsman Street franchise of 1879. The provision in the extension ordinance from which this is inferred is contained in the following language:

> "But with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension, so that but one fare shall be charged between the eastern terminus and the western terminus of its main line."

This it will be noted is merely a recital of the provisions of section 2505 of the Revised Statutes in reference to extensions; the consent of the Council could be given upon no other terms.

This was the condition of affairs when the consolidation referred to took place. The authority for the consoli-

dation and the effect of it is contained in sections 2505, 2505-b, 3443 and 3443-12 of the Revised Statutes set forth in full above. Section 3343-12 also provides, "No increase of fare shall be allowed on any street railroad route by reason of such consolidation." Except as appears in section 3443 the statutes delegate no duty to the councils of cities in connection with the consolidation of street railway companies; nevertheless the respective companies addressed a joint communication to the council of the City of Cleveland bearing date February 9, 1885, upon which the council on February 16, 1885 undertook to pass an ordinance consenting to said consolidation. (Record, 255, pages 149-150). In the communication it is said: "They "desire to consolidate said companies so that passengers can "be carried for one fare between any points upon their respec- "tive lines" and that "The companies do not desire any en- "larged rights or any new franchises beyond being permitted "to run their cars from end to end as above indicated and "they will be controlled by all ordinances now controlling "their respective companies." Section 1 of the ordinance assenting to the consolidation says: "That for a single fare "from any point to any point on the line or branches of the "consolidated road no greater charge than five cents shall be "collected and that tickets at the rate of eleven for fifty cents "or twenty-two for one dollar shall at all times be kept for sale "on the cars by conductors." Section 2 says: "Said con- "solidated company shall be subject to all the liabilities, con- "ditions and penalties to which said several companies are "liable, and said consolidated company and its tracks shall at "all times be subject to the control, regulation and supervision "of the City Council to the same extent that the several com- "panies and their tracks are now liable." (Record 255, pages 149-150).

On April 8, 1887, another extension was made upon consent by the City Council to the consolidated company. This consent was given by an ordinance passed April 8, 1887 (Record 255, pages 151-152). It grants permission to lay an additional track on Franklin Avenue between certain points, and to extend its line for a certain distance on Franklin Avenue. Section 1, among other things, says: "But on the express "condition that no increase of fare shall be charged by said "railroad company on any part of its main line, or on said ex- "tension, and so that but one fare, not to exceed five cents "(5c.) shall be charged between any points on said company's "main line or extension, including the extension herein "granted, and said company shall sell tickets on its cars as "follows: 'Eleven (11) tickets for fifty cents (50c.) and "twenty-two (22) for one dollar ($1.00).'"

On August 12, 1887, the City Council by ordinance consented to another extension by the Woodland Avenue and West Side Street Railroad Company. (Record 255, pages 152-153). The extension is from Kentucky street to Waverly Avenue, and thence along Waverly Avenue to connect with its line of railroad on Bridge Street. The ordinance is in the same form and contains the same provisions as to fares as the one last recited.

On June 20, 1892, the City Council by ordinance authorized the Woodland Avenue and West Side Street Railroad Company to lay an additional track in Kinsman Street from Wilson Avenue to the city limits. (Record 255, pages 154-155). This ordinance contains the same provisions as to fares as that contained in the last two ordinances consenting to extensions by the company above recited, and also makes additional conditions with respect to street paving. This last condition the council had a right to impose at any time by vir-

tue of Section 2504 of the Revised Statutes herein set forth, and is not to be taken as a consideration for the privileges conferred upon the companies, although so claimed in the bill of complaint.

On May 15, 1893, this company, The Woodland Avenue and West Side Street Railroad Company, was consolidated with the Cleveland City Cable Railway Company, thereby creating the Cleveland City Railway Company, the plaintiff below, and the appellee in case No. 255.

In this instance also, notwithstanding that the right to consolidate and the terms and conditions of the consolidation were fixed by statute, as set forth above, and notwithstanding the fact that the City Council had no power of control over the same, and its consent was therefore unnecessary, the form was gone through of addressing to it a communication and obtaining an ordinance assenting to the consolidation. (Record 255, pages 157-158.) The communication addressed by the companies to the Council recites the fact of consolidation to take effect June 1, 1893, and says: "It is proposed on June "1, 1893, to immediately issue proper transfers without ex- "tra charge, so that passengers on any line of the Woodland "Avenue and West Side Street Railroad Company may trans- "fer to and have a continuous passage upon any line of the "Cleveland City Cable Railway Company within the limits of "the City of Cleveland, and also so that passengers upon any "line of the Cleveland City Cable Railway Company may be "transferred to, and have a continuous ride upon any line of "the Woodland Avenue and West Side Street Railroad Com- "pany within the City of Cleveland; only one fare to be "charged for such ride, and as soon as the necessary improve- "ments can be made, additional cross-town lines will be run, "and only one fare charged for a continuous ride upon any

"additional lines within the City of Cleveland." The City Council, on May 15, 1893, by resolution received the communication, and said that "this Council approves such consolidation "upon the terms and conditions stated in such communication." From these several ordinances and resolutions passed since August 20, 1879, it is contended that new contracts have been made between the City and the successors of the original Kinsman Street Railway Company whereby the provisions of the original ordinance stipulating for the right to increase or diminish the rate of fare as the Council may deem justifiable and expedient has been abrogated and surrendered and the absolute right to charge a cash fare of five cents (5c.) and to sell tickets at eleven (11) for fifty cents (50c.) conferred upon the company.

A similar state of facts exists in case No. 256, affecting the rights of the City of Cleveland, and the Cleveland Electric Railway Company. The controversy in this case begins with the East Cleveland Railroad Company, and the ordinance of September 15, 1879, renewing its franchise for a term of twenty-five years. One of the terms of this renewal grant is the stipulation already quoted from the Kinsman Street grant, conferring on the City Council the right thereafter to increase or diminish the rate of fare "as it may deem justifiable and ex-"pedient."

Thereafter, on April 4, 1883, an ordinance was passed granting the right to extend, lay and operate a double track from Willson Avenue to Fairmount Street (Record 256, pages 181-182). Provisions are made as to paving and time schedules, which need not be quoted here. Section 4 of the ordinance provides "that the Council reserves to itself the right "hereafter to increase or diminish the rate of fare between "the west end of the said company's lines in Superior Street

"and the city limits, as it may deem justifiable and expedi-"ent." This space covers all the lines authorized by all franchises of the East Cleveland Railway Company to the date of its passage. On March 15, 1886, another ordinance was passed by the Council of the City of Cleveland (Record 256, page 184). This authorizes the construction of a double track on part of the line covered by the preceding ordinances and is an extension thereof, the part in question being between Fairmount Street and the eastern limits of the city. The condition as to street paving is the same in substance as had been imposed by the ordinance last mentioned. Section 4 of this ordinance is as follows:

> Sec. 4. That the rights as herein granted and conferred are upon the express condition, however, that such company shall charge and collect but one fare of not more than five (5) cents for each passenger, one way in either direction, between the easterly limits of the city on Euclid Avenue, and the westerly terminus of said company's tracks at the intersection of Superior and Bank Streets, and upon the further condition that said company shall run their cars over said line between said points last named in each direction as the public convenience, in the opinion of the common council, by resolution expressed, may require.

On July 13, 1888, an ordinance was passed granting permission to change the motive power from animal to electric power (Record 256, pages 186-188). It seems that the legislature of the state has never passed any statute in reference to this kind of change, and acts of the council authorizing the change are matters of regulation in pursuance either of the right reserved in the franchises when originally granted, or by virtue of rights of control over streets as provided in Section 2640, already cited.

Cincinnati and Spring Grove Ave. St. Ry. Co. vs. Incorporated Village of Cumminsville, et al., 14 O. S., 523.

The courts of first instance in Ohio have held that the change from animal or cable to electric motive power is not an additional burden upon a street, and that the City Council may authorize such change by ordinance.

Harrison vs. Mt. Auburn Cable Co., 17 Bulletin, 265;

Pelton vs. East Cleveland Railroad Company, 22 Bulletin, 67;

the latter case being decided with reference to rights of the appellee in case 256. But whatever view may be taken of the nature of such a change, it cannot be held to be either the granting of a new franchise, or the renewal of an existing franchise "at the expiration thereof." This permission to make the change, whatever the basis of the city's power, was conferred by an ordinance in which the only provision touching on the question of fares is as follows:

> "Sec. 6. The privilege of constructing the electric system, and the operation of its lines as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated, and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five (25) years from and after the date of the passage of this ordinance upon its main and Cedar Avenue lines; but nothing herein shall be so construed as to authorize any increase of present fares for transportation from any portion of said company's lines. * * * *"

On April 12, 1889, the City Council consented to an extension of the tracks of the East Cleveland Railroad Company along and upon Case and other Avenues, and gave per-

mission to operate the same by electricity. The provision with respect to fares is found Record 256, page 190, and is as follows:

> "Sec. 4. That said permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line, or of said extension, and but one fare, not exceeding five (5) cents or one of said railroad company's tickets shall entitle a passenger to transportation over the main line and extension, from the intersection of Lake and Water Streets to the easterly limits of the city, and from the easterly limits of the city to the intersection of Lake and Water Streets."

The foregoing lines and franchises related to territory on the east side of the City of Cleveland. On the 25th day of March, 1893, the East Cleveland Railway Company was consolidated with the Broadway and Newburgh Street Railway Company, thereby creating the plaintiff below, and appellee in this case, No. 256. Afterwards, on the 24th day of April, 1893, the Brooklyn Street Railroad Company and the South Side Street Railroad Company were also consolidated with the said The Cleveland Electric Railway Company, the same name being retained under the second consolidation. Both of these consolidations were made without the consent of the City Council, as by the statute law of the state was entirely proper. Afterwards, on the 22nd day of May, 1893 (Record, 256, pages 191-192), the Cleveland Electric Railway Company addressed a communication to the Council of the City of Cleveland, not requesting either the consent to or the approval of the previous consolidation, but containing the following statements:

> "These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal

and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railway Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accomodate the patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; that its aim has been, and will be, to give its patrons vastly improved service and accomodations by reason of such consolidation."

On May 29th, 1893, the City Council by resolution consented to the consolidation on the following conditions:

"That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said constituent companies and any line of any other of the said constituent companies within the limits of the City of Cleveland, and passengers on any of said lines paying one fare shall be entitled, without extra charge, to be transferred to any other of said lines and have one continuous ride thereon for said single fare."

On July 17th, 1893, an ordinance was passed granting permission to The Cleveland Electric Railway Company to extend its street railroad on certain streets, in which provis-

ions are made as to street paving, sprinkling, etc., but the ordinance is silent as to the rates of fare; it does, however, contain the following provision:

> "Nothing in this ordinance shall be held to release said company from any of the conditions of any of the grants heretofore made by the City to any of said constituent companies." (Record 256, pages 193, 196.

So far as the record discloses these are all the subsequent ordinances and from these it is contended that the City Council has lawfully and intentionally abandoned and surrendered the right to increase or diminish the rate of fare reserved to it in the ordinance of September 15, 1879, by which the franchise of The East Cleveland Railway Company was renewed, and substituted in place thereof a binding contract authorizing the present company to exact a cash fare of five cents and tickets sold at the rate of eleven for fifty cents.

The answers filed, in each case, to these amended bills are so nearly alike that a joint statement may be made of their contents.

They deny and put in issue the jurisdiction of the Circuit Court of the United States to take cognizance of this litigation.

They deny the allegations of irreparable injury and while they admit the intention of the city and its officers to enforce the Hopkins and Cope ordinances they deny that the effort so to do necessarily involves a multiplicity of suits, and they therefore question the jurisdiction of the Court of equity to take cognizance of this litigation on the theoiry that the plaintiffs have a remedy at law. They admit all the ordinances and resolutions set out or referred to in the bills of complaint but they do not admit that they constitute a contract right in

the plaintiffs below to charge and collect any given rate of fare or that they annul or modify the provisions of the two original ordinances in question reserving to the city the right to increase or diminish the rates of fare, nor do they admit that all the provisions of the subsequent ordinancess are valid.

These answers particularly insist that the right so to increase or diminish the rate of fare is one of the obligations and liabilities imposed in a renewal of a grant of a franchise; that it is within the powers of the city council to impose such a condition of renewal and is beyond the power of any subsequent council to release during the life of the renewal grant; in other words that the power of subsequent councils is controlled by that part of section 2502 R. S., above, cited, as follows:

> "And after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not during the term of such grant or renewal release the grantee from any obligation or liability imposed by the terms of such grant or the renewal of a grant."

The answers further insist that the words in the clause last quoted "during the term of such grant or renewal" when taken in connection with the words, "the council may renew any such grant at its expiration" found in section 2501 R. S. take it out of the power of the Council, after it has once settled the terms and conditions of a grant or renewal and fixed by grant the length of time during which those terms and conditions shall remain in force, to change the same except as authorized by the legislature, unless the right is reserved in the ordinance itself to change the same, subject, however, to the limitation that the company be not released from any obligation or liability, for this it is incompetent for the council to do.

The answers insist that the provisions of subsequent ordinances, if they are to be construed as in conflict with these statutory provisions, are null and void; that the legislature has made the provision that consenting to extensions shall not authorize an increase of fare and that the recital of this legislative provision in the ordinance cannot be construed as a contract on the subject nor as relieving against a right to fix fares previously stipulated for and to continue in force for twenty-five years. That such a stipulation or obligation it is beyond the power of city councils to release, that in consenting to consolidation the council were without any office or power in the matter of fare regulations and that what they did in that respect is wholly irrelevant and without force or effect.

The answers further insist that the provisions of the subsequent ordinance should not be so construed as to make them attempts on the part of the council to surrender rights reserved to the city, but that on the contrary the language used in these subsequent ordinances contains words of limitation and not of contract, and so far as they affect the franchises under consideration should be construed rather as partial exercises of the right reserved to increase or diminish fare, than as efforts to surrender or release an obligation or a liability imposed upon the company by the prior ordinance, which the council is by express statute prohibited from releasing.

The Court having held with the plaintiff, the City of Cleveland has assigned on these appeals a number of errors. The errors assigned are precisely the same in both cases except that in case No. 255 the fourth assignment incorporates the Hopkins ordinance and in No. 256 it incorporates the Cope ordinance. (Record 255, page 203; Record 256, page 235).

All these errors are relied on with the exception of

those numbered 10, 11, 12 and 13 in the respective assignments of errors. These assignments bear on the reasonableness of the regulation of the rates attempted to be made by the two ordinances in question, which, as we have seen, does not arise in the present state of the record. As these assignments of error present the same questions in many different forms we shall, for the sake of brevity, not repeat them here but instead shall state the legal questions presented thereby for consideration and decision.

1. The Circuit Court of the United States did not have jurisdiction of this litigation, both parties being citizens of the State of Ohio and no Federal question being involved in the controversy.

2. A court of equity did not have jurisdiction of the controversy for any of the reasons assigned in the bills of complaint, in not appearing that the complainants did not have adequate remedy at law, or that there was any danger of irreparable injury or threatened multiplicity of suits.

3. The Circuit Court erred in adjudging that the two ordinances, passed on the 18th day of October, 1898, and known as the Hopkins and Cope ordinances were null and void as being laws of the State of Ohio having the effect of impairing the obligations of contracts between the complainants and the City of Cleveland, and in permanently enjoining the enforcement of those ordinances.

I.

THE CIRCUIT COURT IS WITHOUT JURISDICTION.

Want of jurisdiction in the Circuit Court of the United States is a defect of which this Court will, of its own motion, take notice. This Court will determine this question for itself independent of any concessions or admissions of the parties. It is a fixed and unalterable rule that consent cannot confer jurisdiction when the law does not. Both of the parties litigant are citizens of the same state in each of these cases. The Court, therefore, has jurisdiction only on the theory that the suit is one arising under the Constitution of the United States. The contention of the appellees in the Court below was that the legislature of Ohio had not delegated to the municipal corporations of the state any general power to regulate the rates of fare on street railways; that there was no inherent power in municipal corporations independent of such express delegation of authority to pass ordinances regulating such rates; that such power cannot be inferred from Section 2640 of the Revised Statutes conferring care, supervision and control of all public highways, streets, avenues and alleys on the councils of cities, giving them the power, and imposing upon them the duty to keep such public highways open and in repair, and free from nuisance.

That the power to regulate fares cannot be inferred from the section of the statute last mentioned, is settled by this Court in the case of *St. Louis vs. The Western Union Telegraph Company*, 149 U. S., 465, citing with approval *St. Louis vs. Bell Telephone Company*, 96 Mo., 623. This Court

said, in the case of *St. Louis vs. Western Union Telegraph Company*:

> "The relation of the telephone or telegraph company to its patrons after the use of the streets has been granted, does not affect the use, and power to regulate the use does not carry with it by implication power to regulate the dealings between the corporations having such use and its individual patrons; but what the company shall pay to the city for the use is directly involved in the regulation of the use.
>
> The determination of the amount to be paid for the use is as much a matter of regulation as determining the place which may be used, or the size or height of the poles."

Upon this rule of law it was and may be contended that the Hopkins and Cope ordinances are not passed in pursuance of any legislative authority, and are therefore void, even though the enforcement of them would not impair any contracts made between the city and the railway companies. The ordinances do not purport to be passed in pursuance of any delegated authority, but by virtue of the contract right to increase or diminish the rates of fare as may seem just and expedient to the City Council. The foundation of the right to pass the ordinances is one growing out of contract, and is not one delegated by the legislature. These ordinances are not therefore laws of the State of Ohio, in the sense that they have been passed by virtue of authority conferred by the State. This being so, the suit is not one arising under the Constitution of the United States, and the jurisdiction of the Circuit Court cannot be maintained.

This question has been decided by this Court in the case of *Hamilton Gas Light Company vs. Hamilton City*, 146

U. S., 258, a case arising under the laws of the State of Ohio; at page 265, the Court, Mr. Justice Harlan, says:

> "The plaintiff's first contention is that there is no statute of Ohio authorizing any city, in which there are already gas-works in full and complete operation, to erect gas-works, or to levy a tax for that purpose. If this were conceded, we should feel obliged — the plaintiff and defendant both being corporations of Ohio — to reverse the judgment, and remand the cause with directions to dismiss the suit for want of jurisdiction in the Circuit Court. The jurisdiction of that court can be sustained only upon the theory that the suit is one arising under the Constitution of the United States. But the suit would not be of that character, if regarded as one in which the plaintiff merely sought protection against the violation of the alleged contract by an ordinance to which the State has not, in any form given or attempted to give the force of law. A municipal ordinance, not passed under supposed legislative authority, cannot be regarded as a law of the State within the meaning of the constitutional prohibition against State laws impairing the obligations of contracts. *Murray v. Charleston*, 96 U. S., 432; *Williams v. Bruffy*, 96 U. S., 176, 183; *Lehigh Water Co. v. Easton*, 121 U. S., 388, 392; *N. O. Water Works v. Louisiana Sugar Co.*, 125 U. S., 18, 31, 38. A suit to prevent the enforcement of such an ordinance would not, therefore, be one arising under the Constitution of the United States. We sustain the jurisdiction of the Circuit Court because it appears that the defendant grounded its right to enact the ordinance in question, and to maintain and erect gas-works of its own, upon that section of the Municipal Code of Ohio, adopted in 1869 (now section 2486 of the Revised Statutes), providing that the city council of any city or village should have power, whenever it was

> deemed expedient and for the public good, to erect gas-works at the expense of the corporation, or to purchase gas-works already erected therein; which section the plaintiff contends, if construed as conferring the authority claimed, impaired the obligation of its contract previously made with the State and the city."

Thus it will be seen that the Court determined that the legislature had conferred power on the City of Hamilton, to do what it was proposing to do, as necessary to be found before it could find that a Federal question was involved. Had it found that the municipal council of Hamilton had not been so empowered it would not have taken jurisdiction of the cause. Whether there is an existing contract to impair is a secondary question and its impairment only becomes a Federal question after the Court finds that the state has delegated power to the municipality, to pass the ordinance or to do the act which it is said would result in its impairment. The test of the question would seem to be whether or not the ordinance would be valid standing alone and independent of a previous contract in conflict with it. If not, then the suit must be fought out in the state courts. The Sections quoted in the statement of facts contain all the statute laws of the State of Ohio either directly or remotely bearing on the question; none of them deal with the right to regulate fares. Section 2501 provides that "a grant may be renewed at its expiration upon such conditions as may be conducive to the public interests." This evidently includes the right to agree upon the rate of fare in making a renewal, and also to stipulate as one of the conditions that the city shall have the right thereafter to increase or diminish the fare. When the renewal is made and accepted, the ordinance of the city exhausts the power delegated by the legislature; the terms and conditions therein agreed upon, between

the city and the company, become a part of the contract between the parties. The scope and extent of the city's power as to regulation of fares is then to be determined by a construction of the language of the contract, entered into between the parties. In this respect the ordinance does not in legal effect differ from a contract between private persons; the fact that one of the parties both in making the contract and in attempting to alter or break it must always speak by ordinance or resolution, does not alter the question of the rights of the parties. The extent of the power and the effect of the alleged subsequent modifications are questions of contract law to be interpreted and construed as are other contracts and by the same forum. That one of the parties to the contract is a municipality and has the right to pass ordinances which in some instances are laws of the state, gives no warrant for the assumption that a Federal question arises whenever the municipality asserts rights reserved to itself by the provision of the original contract.

II.

JURISDICTION OF A COURT OF EQUITY.

The equitable grounds on which jurisdiction is invoked are that the complainants have no adequate remedy at law and that resort to equity is necessary to prevent a multiplicity of suits. The allegations of the plaintiff's bills in this behalf are contained in paragraph 36 in case 256 (Record, page 205), and the allegations of the bill in case No. 255 are precisely the same. In reply to the allegations of the bills that the appellant intends to enforce these ordinances, the answer admits that the city does intend to enforce them according to the true intent and meaning thereof, but denies all the other allega-

tions. There is no proof as to the manner in which the city proposed to attempt the enforcement of the ordinances in question; and that the appellees would not have had an adequate remedy at law, or that they would have been involved in a multiplicity of suits and allegations to this effect, is merely conjecture. The suits should have been delayed until the situation disclosed itself sufficiently to enable a Court to say that a resort to equity and to an injunction were necessary. Both answers contain the following averrment:

> "And defendant avers and contends that this Court has no jurisdiction of this cause among other reasons for this, that the complainant has a complete and adequate remedy at law; that the subject-matter of this cause does not come properly within the jurisdiction of a court of equity and is one appropriately and properly within the jurisdiction of a court of law." (Record 255, page 194; Record 256, page 226).

This position was insisted on in the Court below, and the want of jurisdiction of the subject-matter is assigned here as error. We submit that there was nothing in the cases at the stage when they were instituted to sustain the jurisdiction of a court of equity on these grounds. That such conditions might have developed in the process of enforcing the ordinances may be conceded, but it cannot be assumed that the city would have adopted the methods ascribed to it in the bills of complaint in the absence of evidence on this point, or until the city had taken such action as would not admit of adequate defense at law or necessarily meant a multiplicity of suits; equity ought not to have taken jurisdiction.

This same question was under consideration by this Court in the case of *Detroit vs. Detroit Citizens Street Rail-*

way, 184 U. S., 379 and 381. The Court, Mr. Justice Peckham, delivering the opinion, says:

> "Taking all these facts into consideration, and bearing in mind that the answer does not set up any defense of the lack of jurisdiction of a Court of equity over the subject-matter, and does not insist that there is an adequate and plain remedy at law (and no such objection has been taken at any time, and has not been insisted upon before us,) we do not feel compelled, under the peculiar circumstances of the case, to ourselves take notice of it.
>
> "It is not such a case as on its face equity could have no jurisdiction over, such as an action to recover damages for an assault, or for a libel or slander, but the question between the parties as to the validity of various ordinances and the right of the city to enforce them, involving, as they may, the credit and possibly the solvency of the complainant, and taking into consideration the public interests involved in a speedy and final determination of the question, all these as well as other facts already mentioned, we think, make out a case for following the general rule, that a defense of this nature will not be recognized where it has not been taken by answer or in any other manner, and is not insisted upon on the hearing before the Court. *Reynes v. Dumont*, 130 U. S., 354; *Kilbourn v. Sunderland*, 130 U. S., 505; *Brown v. Lake Superior Iron Co.*, 134 U. S., 530.
>
> "We do not mean to assert that in all cases of this nature, involving simply the validity of a subsequent ordinance or law, a Court of equity would be the proper forum, but confine our decision to the special facts of this case, including the fact that no objection has been taken to the jurisdiction of the Court at any stage of the litigation, and is not now raised by any party to the same."

Thus it will be seen that while the Court in that case took jurisdiction it did so expressly in pursuance of the rule "That a defense of this nature will not be recognized where it has not been taken by answer or in any other manner or is not insisted upon in a hearing before the Court." The defense in this case was taken by answer, was insisted on at the hearing in the Court below and is now insisted on in this Court. And moreover the answer denies all the allegations of the bill imputing to the City of Cleveland an intention to enforce the ordinances in an oppressive manner. This we submit is one of the cases in which a court of equity is not a proper forum.

III.

THE CIRCUIT COURT ERRED IN ADJUDGING THAT THE TWO ORDINANCES KNOWN RESPECTIVELY AS THE HOPKINS AND COPE ORDINANCES, WERE NULL AND VOID, AS BEING LAWS OF THE STATE OF OHIO, HAVING THE EFFECT, IF ENFORCED, OF IMPAIRING THE OBLIGATION OF CONTRACTS BETWEEN THE COMPLAINANTS AND THE CITY OF CLEVELAND, AND IN PERMANENTLY ENJOINING THE ENFORCEMENT OF THE SAME.

In the final decrees, which were passed in these cases, the judge below expressly based them upon the question as to whether the ordinances in question were void as impairing existing contract rights, (Record 255 page 200; Record 256, page 231), expressly declining, in the final decree in case No. 255, to adjudicate the question as to the reasonableness of the proposed regulation, and likewise declining to pass upon the

question as to whether the enforcement of the ordinance would be, as alleged by the complainant, the taking of this property without due process of law. In the decree in case No. 256, the Court does not expressly decline to pass upon these questions, but omits them from consideration and bases the decree upon the impairment of contract rights by the ordinance which the City of Cleveland proposed to enforce.

It thus appears that the sole question decided below was that the Hopkins and Cope ordinances were in conflict with the Constitution of the United States in being laws of the State of Ohio impairing the obligation of contracts. We have seen that unless these ordinances pretend to be passed pursuant to a legislative delegation of authority, this question cannot be raised. It therefore follows that if the complainants are entitled to relief in these actions at all, it must be upon the assumption that the State of Ohio, through its legislature, has conferred upon municipalities somewhere, either by express statutory delegation, or by necessary implication, the right to regulate fares.

Assuming then, for the purpose of argument, that the legislature of Ohio has conferred upon the City of Cleveland the right to regulate fares, we contend that this is a right conferred for the benefit of the public , and one which the Council, as trustees, can neither bargain away nor surrender. The attitude of this Court upon such a power appears in the case of *Owensboro vs. Owensboro Water Company*, 191 U. S., 358, where the Court holds that such a power is a governmental power continuing in its nature, which if it can be bargained away at all, can only be by positive grant, and if any reasonable doubt exists with regard thereto, it must be resolved in favor of the continuing existence of the power.

In *Ruggles vs. Illinois*, 108 U. S., 526, this Court, in considering an amendment to the charter of the railroad company, which provided; "Said company shall have power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfill the purposes, and carry into effect the provisions of this act, and for the well-ordering, regulating and securing of the affairs, business and interests of the company; and *provided*, that the same shall not be repugnant to the Constitution and laws of the United States, or repugnant to this act, the Board of Directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same as they shall from time to time, by their by-laws determine, and to levy and collect the same for the use of said company," held that

> "inasmuch as the power to establish rates was to be exercised through by-laws and the power to make by-laws was restricted to such as should not be repugnant (among other things) to the laws of the State, the amendment did not release the company from restrictions upon the amount of rates contained in general and special statutes of the State."

The second paragraph in the syllabus in the same case states the law with regard to all immunities from legislative or governmental control claimed by grantees of public rights. Its language is:

> "Grants of immunity from legitimate governmental control are never to be presumed unless an exemption is clearly established. The legislature is free to act on all subjects within its general jurisdiction, as the public interests may require."

We are not here discussing the power of the Council of the City of Cleveland as a party to the contract, but as a

governmental agent, basing our argument upon the assumption postulated by the claim of the plaintiffs to the right to relief in this Court, that the Council of the City of Cleveland is attempting to exercise power delegated to it by the legislature of the state. Such a power of regulation is a continuing power of government. It is a duty and a right which the government owes to its citizens and when exercised, the government acts not in its proprietary capacity as a party to the contract, but strictly in its governmental capacity; hence such power, it has been held by this Court, cannot be bargained away at all, certainly not except by words of positive grant, and all reasonable doubts must be resolved in favor of the existence of the power to regulate. See Opinion of Mr. Chief Justice Waite in *Stone vs. Farmers, etc.*, 116 U. S., 307. Nor is the exercise of such a power a trespass upon the rights of the owners of property in *quasi* public corporations. See Opinion of Mr. Justice Barry, in *Ames vs. Union Pacific Railway Company*, 64 Fed. Rep., 165. There is, in fact, an unbroken line of authorities from the leading case of *Munn vs. Illinois*, 94 U. S., 113, down to the last utterance of this Court, indicating that such a right to regulate is a governmental function, and will be preserved unless explicitly contracted away.

As appears from the statutes which we have cited above, councils of cities in Ohio have the right to grant franchises to street railroad companies under certain legislative restrictions. They have the further right to renew any street railroad grant, at its expiration, for a period not in excess of twenty-five (25) years, upon such terms as are considered conducive to the public interests, and they are expressly prohibited from releasing the grantees of such franchises from any obligation or liability imposed by the terms of their original or renewal grants during the time for which such grant

is made. No question has been, or probably can be raised as to the validity of the two ordinances passed in 1879, granting renewals to the Kinsman Street Railroad Company and the East Cleveland Railway Company. They were for twenty-five years, the period permitted by statute, and were within the other statutory restrictions placed around the granting power by the legislature. In no subsequent ordinance permitting extensions of these railways, or the consolidation of them with other railways, is there contained a single explicit statement that the right is given to the grantee company to charge a five (5) cent fare for the transportation of passengers. These various ordinances, as they appear in the bills of complaint, and as their provisions are recited in the statement of facts above, contained here and there the stipulation that no greater rate of fare than five (5) cents shall be charged. This fare provision is the most favorable contained in any of the subsequent ordinances, to the contention of the appellees contained in any of them, while throughout the entire body of extension and consolidation ordinances and resolutions, there are contained numerous statements that the extended or consolidated companies shall be subject to all the liabilities and obligations of the original or constituent companies. Moreover, in the communications addressed to the Council from the companies asking permission to consolidate or explaining consolidations already effected, there is distinct disclaimer of any intention to escape liabilities resting upon the constituent companies, or to secure any enlarged rights.

———o———

A summary statement of the contentions of the appellant in these cases upon this point may be serviceable here. It is claimed that the two ordinances of 1879 are still in force and effect and especially so with regard to those provisions

with respect to the power to regulate fares. In support of this contention it is further claimed,

FIRST, that the reservation to the city of the right to reduce or diminish the rate of fare contained in said ordinances was an obligation and liability imposed by its terms, within the meaning of that section of the Revised Statutes of the State of Ohio which deprives councils of cities of the power to release a grantee from such obligation or liability.

SECOND, that the only ordinances passed by the Council of the City of Cleveland subsequent to the original renewal ordinances of 1879 were ordinances either granting extensions of existing lines, consenting to the consolidations of existing lines or granting the right to change from horse to electric motive power and that in granting any such rights or consents it was incompetent for the Council to surrender the right reserved to it under the renewal franchise ordinance of 1879.

THIRD, that in no one of the ordinances subsequent to the ordinances of 1879 was there anything which expressly surrendered or waived the rights of the city to regulate the rate of fare reserved to it under said ordinances of 1879, nor was there anything in any of said ordinances by which such surrender or waiver can be fairly or reasonably implied.

FOURTH, there is nothing in any ordinance subsequent to the original ordinances of 1879 which is inconsistent with the provisions of those original renewal ordinances.

FIFTH, that any attempt to treat the consents to extensions, consolidations or changes of motive power as renewals of the rights renewed by the ordinances of 1879 must be nuga-

tory in view of the positive provisions of statute above cited, which confer upon municipal councils the power to make such renewals only at the expiration of existing grants.

It therefore follows that if the Court should find that the legislature of Ohio has delegated to municipal councils the power to regulate fares, and without such a finding by the Court the complainants were entitled to no relief below and the Circuit Court had no jurisdiction of their complaints, still the City of Cleveland, not having bargained away this power by express language in any contract with the complaints, but having on the other hand expressly stipulated in the ordinance of 1879 for its reservation and continued existence, and not having by any subsequent ordinances or resolution surrendered or contracted away this right, the right must still exist, and the Court below, having jurisdiction on this theory erred in holding that the attempted exercise of the power was an impairment of any contract right of the complainants.

Conclusion.

Upon these three grounds it is asked that these cases be reversed and remanded, with instructions that the bills of complaint be dismissed, if this Court should find that the Circuit Court was without jurisdiction, and if the Court should find otherwise on the jurisdiction question, for such further proceedings as may be in accordance with the law.

Respectfully submitted,

D. C. WESTENHAVER and
NEWTON D. BAKER,
Counsel for Appellant.

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JAMES H. McKENNEY
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Supreme Court of the United States.

No. 255.

THE CITY OF CLEVELAND,
Appellant,

vs.

THE CLEVELAND CITY RAILWAY COMPANY,
Appellee.

No. 256.

THE CITY OF CLEVELAND,
Appellant,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
Appellee.

BRIEF FOR APPELLEE.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

THE CITY OF CLEVELAND,
Appellant,

vs.

THE CLEVELAND CITY RAILWAY COMPANY,
Appellee.

No. 255.

THE CITY OF CLEVELAND,
Appellant,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
Appellee.

No. 256.

WILLIAM B. SANDERS,
of counsel.

BRIEF FOR APPELLEE.

Statement.

The statement in brief for appellant does not, we think, in all respects present fully the condition of the various ordinances construed by the Court below

in reaching the decree complained of. We suppose there appears in the record, which by a series of misunderstandings we have not yet received, the opinion of the court below; but whether or not this be true, it is reported in full in the 94th Federal Reporter, page 385, and there will be found a very full statement of the situation of these two companies under their several contracts with the City of Cleveland, the legal effect of which the Court found required the decrees which were entered. We respectfully ask the attention of the Court to this statement there appearing, and also make the following summary of the situation.

FIRST, as to the Cleveland City Railway Company.

This company is a corporation of Ohio, with a capital stock of $8,000,000. and a bonded indebtedness of something over $2,000,000. It is a consolidated company formed by the consolidation of the Woodland Avenue and West Side Street Railway Company and the Cleveland City Cable Railway Company. The Woodland Avenue and West Side Street Railway Company was organized in 1885, and it was a consolidated company formed by the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company, and the last named, the Woodland Avenue Railway Company, was the successor by purchase of the Kinsman Street Railroad Company. By the terms of this purchase and the various consolidating agreements, the complainant, the Cleveland City Railway Company, became invested with all and singular the franchises of the above mentioned companies. When the Woodland Avenue and West Side Street Railway Company was organized, the constituent companies which made up that organization were independent lines of railway, one operating chiefly upon the west side

of the Cuyahoga River and the other upon the east side, running to the north easterly portion of the city. Each was acting under independent franchises and contracts with the City of Cleveland. There was no exchange of traffic by way of transfer, and each company was charging a fare of *five cents* over its lines. And at that time the West Side Railway Company had by ordinance the right to continue operations for twenty five years from February, 1883, and to charge a *cash fare of five cents for each passenger carried.* The Woodland Avenue Railway Company was operating its lines of road under several grants, among others a grant made in 1879, relating to the operation of cars from Water Street through Superior and Ontario Streets and Kinsman Street to Madison Avenue. (Record, 141.) This grant provided among other things that the company should not charge more than five cents cash fare, and in said ordinance was reserved the right to the municipal council to thereafter increase or diminish the rate of fare as it might deem justifiable and expedient, this being the ordinance known as "*The Kinsman Street Ordinance*" and under which the appellant claimed the right to put into operation the ordinance reducing the fare, set up in the bill of complaint. *In 1883* an ordinance was passed granting the Woodland Avenue Railway Company the right to extend and construct its line of railway upon Woodland Avenue from the crossing of the C. & P. Railroad Company's tracks to Corwin Street, (Record, 148) and in this ordinance provision was made for the operation of cars over the entire line, *including the line referred to in the Kinsman Street ordinance,* the company agreeing that during the continuance of such grant it would charge but *one rate of five cents over its entire line including such extension.* In 1885, upon the consolidation forming the Woodland Avenue and West Side Street Railroad Company, the city council passed an ordinance requiring the company to carry passengers without change of cars by the running of through cars over its entire line for a single fare and at a rate of fare "*not*

greater than five cents"; and requiring that tickets shall be sold at the rate of eleven for fifty cents or twenty-two for one dollar. (Record, 149). This ordinance was duly accepted by the Woodland Avenue and West Side Street Railroad Company and its terms have been complied with; and the provisions so fixing the rate of fare to be *charged at five cents had reference to and included the operation of cars upon that portion of Woodland Avenue*, formerly Kinsman Street referred to in the ordinance sought to be enjoined by the bill. Again, *in April, 1887*, the Woodland Avenue and West Side Street Railroad Company accepted an ordinance requiring them to build an extension upon Franklin Avenue; (Record, 152) and in and by said ordinance it was provided that the company should carry over its entire line, including said extension, *at a rate of fare not to exceed five cents.* This ordinance is still in force. *In August, 1887*, another ordinance was passed by which the Woodland Avenue and West Side Street Railroad Company was required to build an extension; (Record, 153) and again it is provided that but *one rate of fare of five cents shall be charged over the entire line; this line including the portion of the old Kinsman Street line with respect to which the Council claimed in the ordinance attacked in the bill to have the right of regulation. In 1892* another ordinance was passed and accepted by the Woodland Avenue and West Side Street Railroad Company, providing for an additional track upon *Kinsman Street*, (Record, 154) which ordinance required large expenditure of money by way of paving and repairs of pavement; and in this ordinance it is provided that the company shall charge but one fare between any points on said company's line and extension *and sell tickets at the rate of eleven for fifty cents or twenty two for one dollar.*

Prior to May 13th, 1883, the *Cleveland City Cable Railway Company*, the other constituent Company making up the complainant the Cleveland City Railway Company, owned and operated various independ-

ent lines of railway in the city. And with respect to each one of its ordinances, it was permitted to charge a cash fare of *not to exceed five cents.* In *May, 1893,* at the time of the consolidation, the two companies addressed a communication to the city council (Record, 157) notifying it of their agreement in that respect, and that it was proposed to establish a cross town line and charge but one fare for a continuous ride upon any additional lines within the City of Cleveland. Upon the receipt of this communication, the council on *May 10th, 1893,* passed a resolution approving the proposed consolidation upon the terms and agreements stated in such communication ; and since the first day of June, 1893, the Cleveland City Railway Company, the complainant, has operated the said various lines of street railway, charging a cash fare of five cents for each passenger and selling tickets good for passage over its entire lines as required by said several ordinances.

In this situation the city coucil passed, on the *17th of October 1898,* the ordinance which is attacked in the bill of complaint, entitled "*An ordinance to provide for a diminution of fare, under an ordinance granting a renewal of the franchise to the Kinsman Street Railway Company.*" (Record, 158.) This ordinance recites the provision of the so-called Kinsman Street ordinance of 1879, reserving "*the right to hereafter increase or diminish the rate of fare as may seem justifiable and expedient*" and further recites "*the council now deems a diminution of fare justifiable ;*" and by Section 1 of the ordinance provides "*that the rate of fare for a single continous passage over the lines and all extensions thereof operated under the aforesaid grant to the Kinsman Street Railway Company, be and the same hereby is fixed at four cents cash fare over the whole or any part thereof ;*" and also requiring in another section the sale of tickets at the rate of seven tickets for twenty-five cents.

The contention of the Cleveland City Railway Company, the complainant, and upon which it sought and obtained the permanent injunction shown in the

record, is that said last mentioned ordinance of *October 17, 1898*, which so requires it to carry upon a portion of its line at a *cash fare of four cents* and to sell tickets at the rate of seven for twenty five cents, *is in violation and contravention of the contract relations existing between the said company and the City of Cleveland*, and impairs its contract rights in this, *that whereas it is entitled by virtue of the several ordinances herein referred to, to charge upon all of its said lines a cash fare of five cents, the provision of said ordinance requires it to accept a cash fare of four cents, and whereas it is entitled as respect ticket fares to sell tickets at the rate of eleven for fifty cents or twenty two for one dollar, this ordinance requires it to sell tickets at the rate of seven for twenty five cents, and this the complainant claims would be an impairment by law of the State of Ohio of its contract rights growing out of said ordinances and its acceptance thereof.* It is also set out in the bill of complaint and contended by the complainant that the practical effect of this ordinance would be to reduce the rate of fare to four cents for a cash fare and three and four-sevenths cents for a ticket fare; that experience in railroad operation has shown that where there is such a difference between ticket and cash fare, at least seventy per cent. of the passengers use tickets; and complainant shows that it would be obliged to carry about seventy per cent. of it passengers at the rate of three and four-sevenths cents. whereby its gross receipts would be reduced more than one fifth, while its operating expenses would remain the same; and that the practical operation of the ordinance would be to diminish its net receipts more than fifty per cent; and the bill gives a comparative statement of gross and net receipts for the year 1897, showing the number of passengers carried, the rate per passenger received under existing ordinances, and what its receipts would have been had the ordinance of October 17, 1898, been put in force; and from this statement it appears that its gross receipts would have

been reduced something more than twenty per cent. and that the company would have suffered a loss in income of over $220,000, more than 52.5 per cent of its net income, whereby it is contended that it would sustain losses which, without including anything for interest charges, depreciation, dividends or interest on capital, and nothing by way of sinking fund, would deprive it of any reasonable profit which it is entitled to obtain from its property, and consequently taking its property without due process of law.

SECOND, as to the Cleveland Electric Railway Company.

This Company is a corporation with a capital stock of $12,000,000. and a bonded indebtedness of about $3,750,000. It is a consolidated company, exercising all the rights and franchises which had theretofore been granted to the East Cleveland Railroad Company, the Broadway and Newburgh Street Railway Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company.

The East Cleveland Railroad Company was a corporation which had operated lines of railways in Cleveland since 1859, and was operating a line on Euclid Avenue extending from the business portion of the city on Bank Street through Superior Street, Euclid Avenue, Erie Street, Prospect Street, Case Avenue and Euclid Avenue to the city limits. It also had a Garden Street line, a Cedar Avenue line and a Wade Park Avenue line. All these lines were being operated under grants from the City of Cleveland upon the faith of which the company had constructed its road. Prior to September 15, 1879, the East Cleveland Railroad Company was operating its main line from the intersection of Superior and Water Streets to the easterly limits of the city on Euclid Avenue under various grants, some from the city council, some granted by the county commissioners

before the territory affected thereby became a part of the city, and still other grants from the authorities of the former village of East Cleveland; and the contract rights of the company for the operation of its road easterly of Wilson Avenue contained no restrictions respecting the rate of fare to be charged, and extended for aperiod of nearly twenty years; and at that time east of Wilson Avenue upon Euclid Avenue there was but a single track; and under contracts and agreements then in force between the company and the public authorities, it had the right to charge passengers one fare from Water Street to Wilson Avenue, another fare from Wilson Avenue to Fairmount Street, and still another fare from Fairmount Street to the City limits; and it was in fact charging two fares between Water and Superior Streets and the city limits.

In this situation the East Cleveland Railroad Company and the city entered into a new contract providing for the renewal of the grant to the East Cleveland Railroad Company over a portion of the line then operated from Superior and Water Streets, through Superior Street, Erie Street, Prospect Street, Case Avenue, Euclid Avenue, and along Euclid Avenue to *Wilson Avenue;* and the said ordinance imposed new conditions as respects paving to be done by said company, removal of snow and ice and other similar provisions, and by Section 6 of said ordinance it was vided "*that said company should not charge more than five cents each way for a passenger over the whole or any part of the line therein renewed*" (Record, 177); and the council reserved to itself the right to *thereafter increase or diminish the rate of fare as it might deem justifiable or expedient.* Under this ordinance, which was to remain in force for twenty-five years from the 20th of September, 1879, the company reconstructed its tracks between Superior and Water Streets and Wilson Avenue, and up to April, 1883, charged under the terms of the ordinance *one rate of fare to Wilson Avenue,* and *an additional fare of five cents*

easterly from Wilson Avenue. On *April 4th, 1883,* another ordinance was passed and accepted by which the company was granted the right to build an additional track on Euclid Avenue easterly from Wilson Avenue to Fairmount Street (Record, 181), and in this ordinance it was again provided that the council *reserved the right to thereafter increase or diminish the rate* of fare *between the westerly end of said company's line on Superior Street and the city limits.* The relation then between the company and the city was that the company had agreed to carry passengers over its lines to the city limits *for five cents,* but it had not *agreed to run through cars and was, in fact, operating only a portion of its cars as through cars.* Such arrangement was unsatisfactory both to the city and the company, and in *March, 1886,* another ordinance was passed dealing with *the rights of the company over this same line,* and by this *ordinance the company became obliged to construct and operate a double track in Euclid Avenue from the easterly line of Fairmount Street to the limits of the city and to pave between the rails of its track and to keep portions of the pavement in good repair; all of these obligations being in addition to those existing under former ordinances;* and in and by this ordinance it was provided that the company should operate *the whole of said track as a through line with through cars and should charge and collect* " *but one rate of not more than five cents for each passenger in either direction* " and that the contract should be in *force until the 20th of September, 1904* (Record, 184).

Up to July, 1888, the company operated in pursuance of this ordinance, and at that time entered into a further contract by ordinance with the city providing for the equipment and operation of its lines by electricity (Record, 186); and in this ordinance it was provided that the privilege of constructing the electric system and operation of said lines was granted to said company in consideration of the improved facilities contemplated and the large expense necessary to secure the same, and that the right to operate said line

should be and remain in force for the period of twenty five years from and after the passage of said ordinance ; but that no increase of the present rate of fare should be made by the company, and as alleged in the bill, the present rate of fare therein referred to, which was to be operative during the life of said contract, was as herein stated, five cents for each and every passenger carried in either direction over said line.

Thereafter the said company accepted an ordinance relating to the equipment of its Cedar Avenue lines with electricity, which was done at an expense of many hundred thousands of dollars ; and thereafter an ordinance to operate the line known as the Wade Park Avenue line (Record, 189), it being provided in said last mentioned ordinance that no increase of fare should be charged by said company on any part of its main line or said extension "*and that one fare not to exceed five cents or one of said company's tickets should entitle a passenger to transportation over the main line and the extension from the intersection of Lake and Water Streets to the easterly limits of the city.*" That prior to May, 1893, the *East Cleveland Railroad Company, the Broadway and Newburgh Street Railway Company, the Brooklyn Street Railway Company* and the *South Side Street Railway Company were engaged in* the operation of their respective lines of road in various and different parts of the city ; each of them was authorized by ordinance to charge a *cash fare of five cents*, and each was operating an independent line, no system of transfers existing.

Thereupon, about *April, 1893*, these several companies consolidated, forming the present complainant, the Cleveland Electric Railway Company, which succeeded to the rights of each of the constituent companies, and thereupon, upon *May 24, 1893*, the city council adopted a resolution consenting to said consolidation (Record, 192) and providing, among other things, as follows : "*That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of said constituent companies*

and any line of any other of said constituent companies within the limits of the city of Cleveland, and passengers on any such line paying one fare shall be entitled without extra charge to be transferred to any other line." Said resolution further provided that the company should file with the city a written acceptance of the terms of said resolution, which it did on May 29th, 1893; and ever since the adoption of said resolution continued to operate said various lines of railway and to charge only the same cash fare of five cents for each passenger, in strict compliance of each of the above contracts which each of said companies had with the city, and put in force the system of transfers contemplated in said council resolution. That none of the grants or contracts under which said constituent companies which form the complainant were authorized to operate and so charge a cash fare of five cents had expired, but all of said grants were in full force. *That in 1893*, the complainant accepted an ordinance relating to extending its double track on Prospect Street to Erie (Record, 183), in which it was provided that in its operation it should comply with the regulations of the ordinance passed by the city council May 29th, 1893, approving said terms of consolidation.

Complainant alleges full compliance with all and singular terms and conditions of these several ordinances, and complains that the city on the 17th of October, 1898, passed an ordinance entitled "*an ordinance to provide for diminution of the rate of fare under Section 6 of an ordinance passed September 15, 1879*" (Record, 197) this being one of the original ordinances to the East Cleveland Railroad Company hereinbefore set forth; and it being undertaken by this last mentioned ordinance to *fix a cash fare of four cents and a ticket fare at the rate of seven tickets for twenty five cents.* The complainant the Cleveland Electric Railway Company makes the same contention with respect to said ordinance last mentioned as being in contravention of its contract obligations with the City of Cleveland with

respect to cash and ticket fares, and with respect to the practical effect of the ordinance if put into operation, as diminishing its receipts, as is claimed by the Cleveland City Railway Company which has been hereinbefore set forth, and claims that the rate of fare is unreasonable and would amount to the taking of its property without due process of law, and gives facts and figures which it alleges makes evident such contention.

The foregoing is a general statement of the contents of the bills of complaint in the two cases under discussion, and is taken in substance from the statement of facts appearing in the opinion of the Court in *94 Federal Reporter, 385*, to which reference has already been made.

The Court found as respects each of these complainants that it had a contract right as between it and the City of Cleveland to continue the operation of its various lines at a cash *fare of five cents, and a ticket fare of twenty two for one dollar or eleven for fifty cents*, and that the enforcement of the ordinances complained of which attempted to reduce this rate of fare was in direct contravention of such contract obligation. The complainants appealed to a Court of Equity to declare the ordinances void because they were without adequate remedy at law in the premises, fully setting out in the bills the multiplicity of suits, the various differences and annoyances which would arise in dealings with the public, and clearly upon the facts of the bills making a case in which equity only could furnish an adequate remedy. (Record, 205.) The Court upon motion for judgment upon the pleadings, the answer filed admitting the ordinances as pleaded, held that the enforcement of the ordinances complained of, of October, 1898, would be an impairment of the existing contracts between said complainants and the city, and thereupon adjudged them void. (Record, 232.) As respects the issue raised as to the reasonableness of the fare, the Court found it unnecessary to pass upon that question, as shown by its decree.

ARGUMENT.

Replying to the brief of appellant with respect to the errors assigned, and taking them in the order made, we submit:

I.

The two bills exhibited set forth a state of facts upon which the Circuit Court had jurisdiction to grant relief. The contention of the appellant on the question of jurisdiction, as we understand it, is that the ordinances complained of were not passed by virtue of delegated power from the State, and therefore they are not laws of the State which are within the prohibition of the Constitution against the impairment of contracts by State legislation.

We had not supposed that this question was open for discussion, in view of the many holdings of this Court upon the subject. The Legislature of Ohio, under *Sections 2701-2*, has authorized the City of Cleveland to make grants to street railroad companies prescribing the terms and conditions upon which railway lines may be located and operated. One of the matters with respect to which it may so contract by ordinance is the rate of fare to be collected during the life of the grant. These ordinances when accepted become contracts and cannot be annulled or amended without the consent of both parties.

Railroad Co. vs. Smith; 29th O. S., 292.
Cincinnati S. Ry. Co. vs. Village of Carthage, 36 O. S. 634.
City of Columbus vs. Columbus St. R. R. Co., 45 O. S., 104.
City Ry. Co. vs. Citizens St. Ry. Co., 166 U. S., 557.

It is not essential to Federal jurisdiction in enforcement of the guarantees of the Fourteenth Amendment

that there should be a valid contract or that the impairment or depreciation should really be effected through legislative or other action of the State; but it is sufficient if these grounds of suit are claimed in good faith and the contention is not wholly destitute of merit.

Citizens Railroad Co. vs. Citizens Street Railroad Company, 106 U. S., *supra.*
Illinois R. Company vs. City of Chicago, 176 U. S., 646.
Yazoo & M. V. R. Company vs. Adams, 180 U. S., 1.
Illinois Central R. Co. vs. Adams, 180 U. S., 28.
Vicksburg Water Works Co. vs. City of Vicksburg, 185 U. S.——
Riverside & A. R. R. Co. vs. City of Riverside, 118 Fed. Rep. 740.

In the City Railroad Company against Citizens Street Railway Company *(166 U. S., 557)* this Court say:

> " *All that is necessary to establish the jurisdiction of the Court is to show that the complainant had or claimed in good faith to have a contract with the city which the latter had attempted to impair. Conceding that the Legislature of the State alone had the right to make such a grant, it may be, as was observed in Wright vs. Nagle (101 U. S., 792), exercised either by direct legislation or by agency duly established having power for that purpose. The grant when made binds the public and is directly or indirectly the act of the State. The easement is a legislative grant, whether made directly by the Legislature itself or by any one of its properly constituted instrumentalities.*"

Again, in the same case, this Court say:

> " *There can be no doubt that the Circuit Court had jurisdiction of the case, notwithstanding the*

fact that both parties are corporations and citizens of the State of Indiana. It should be borne in mind in this connection that jurisdiction depends upon the allegations of the bill and not upon the facts as they subsequently turned out to be. The gravamen of the bill is that under the act of the General Assembly of 1861 and the ordinance of January 18, 1864, and April 7, 1880, the Citizens Railroad Company had become vested with certain exclusive rights to operate a street railway in the City of Indianapolis either in perpetuity or for the term of thirty years or thirty seven years, which the City had attempted to impair by entering into a contract with the City Railway Company to lay and operate a railway upon the same streets."

A similar bill was sustained by this Court in *Detroit against Detroit Citizens Street Railway Company (184 U. S., 368).* And that a bill in equity irrespective of diverse citizenship will lie to protect complainant against the impairment of contract rights or the taking of its property without due process of law, has been repeatedly recognized by this Court. Among other cases is that of *Chicago M. & St. P. Ry. Co. against Minnesota, 134 U. S., 460; Smyth vs. Ames, 169 U. S., 466.*

Apparently recognizing the authority of these cases, we understand the contention of counsel for appellant to be that as the ordinances attacked by these bills were passed in the attempted exercise of a right reserved in a former ordinance, such exercise by ordinance is not a legislative function, but is an action of the council in pursuance of contract, and therefore is not a law of the State within the principle of the cases to which we have referred. And quotation is made from Hamilton *Gas Light Company against Hamilton City, 146 U. S., 258,* in which this Court said that the suit could not be maintained, diverse citizenship not existing, if it was to be regarded as one in which the complainant merely sought protection against the vio-

lation of an alleged contract by an ordinance to which the State has not in form given or attempted to give the force of law. And quotation is made from the opinion in that case, wherein *Harlan, Justice*, says: "We sustain the jurisdiction of the Circuit Court because it appears that the defendant grounded its right to enact the ordinance in question and maintain and erect gas works of its own upon that section of the Municipal Code of Ohio adopted in 1869 providing that the city council of any city or village should have power whenever it was deemed expedient for the public good to erect gas works at the expense of the corporation or to purchase gas works already erected therein; which section the plaintiff contends, if construed as conferring the authority claimed, impaired the obligation of its contract previously made with the State and the city."

We discover nothing in the language of the Court here quoted which sustains the contention of the appellant at Bar. The power which the city council of Cleveland possessed to pass any and all of these ordinances was legislative power delegated to it by the General Assembly of the State, and any ordinance which it so passed in pursuance of such delegation was a law of the State, which, if it impaired contracts or took property without due process of law, violated the Federal Constitution.

When the city council passed the original ordinances under which it reserved the power of subsequently changing the rate of fare, the ordinance which it so passed was the result of a legislative act upon its part, and when passed was a law of the State, and the right which the council reserved is a right which it also reserves under the same delegation of power. It is a right which it only could exercise by another legislative act, which it derives power to perform, not from the reservation, but from the delegation of power made to it by the General Assembly to fix by ordinance the terms and conditions of street railway grants.

Clearly the original ordinances of 1879 were "Laws of the State" and the "Hopkins and Cope Ordinances" which are attacked in the bill were legislative acts of the council passed in pursuance of the same delegation of power which authorized it to pass the original ordinances of which such reserved right is a part.

Manifestly the ordinances of which complaint is made in the bill were legislative acts of the council. The power which the council had to so legislate upon this subject was a power derived from the legislature. No contract between the railway companies and the city could confer power to legislate. The power to legislate must be derived from the Legislature; and in whatever form the council sees fit to exercise such legislative power, its authority so to do is at all times a delegated authority from the primary source, the General Assembly of the State.

In 1879 it was by virtue of delegated power in the city that it passed the ordinances in which it had power to fix the terms and conditions of operation. In the exercise of such delegated power it provided that it might thereafter by future legislation modify the terms of the legislative act as then enacted. Certainly when it exercises this reserved power of future legislation, its authority so to do must be referred to its original source, namely, the legislation of the State which delegated to the council the right to fix the terms and conditions of street railway ordinances.

It is clear, we submit, that there is no merit in the contention that the Circuit Court was without jurisdiction because the ordinances attacked were not ordinances in which the State, acting under delegated power, attempted by legislative act to impair the obligation of existing contracts.

This contention that because the city council in passing the ordinance in question acted under a reservation contained in a former ordinance that such action was not legislative, is completely answered by the ruling of this Court in Los Angeles vs. Los Angeles City Water Company, 177 U. S., 558. In this case it

was contended, the ordinance being one regulating water rates, that the contract only purported to bind the city in its corporate capacity and not as a governmental agent of the State; this contention being based on the fact that the ordinance complained of was passed under a reserved power in the original contract to regulate rates.

In reply to this contention this Court said:

> "The argument to support the contention, succinctly stated, is that the right to regulate rates came from the contract, not from the law; in other words, it was reserved from the contract and was a virtual granting back by the lessees of the proprietary right which would have otherwise passed by the lease, leaving, however, all municipal powers intact. * * * We think, therefore, the power to regulate rates was an existent power not granted by the contract but reserved from it with a single limitation, the limitation that it should not be exercised to reduce rates below what was then charged. Undoubtedly there was a contractual element. It was not, however, in granting the power of regulation, but in the limitation upon it."

And this Court sustained the jurisdiction upon an allegation that such subsequent action of the council under a reserved power in the contract was a legislative act and if it impaired the contract it might be attacked in the Federal Courts.

See, also, American Water Works & Guarantee Co. vs. Home Water Company, 115 Federal Reporter, 171.

II.

The bills present cases clearly within the jurisdiction of a Court of Equity.

It is contended in brief of appellant that it does not appear from the allegations of the bills that complainants were without adequate remedy at law, and that therefore a Court of Equity was without jurisdiction. And this contention, it is alleged, finds support in Detroit vs. Detroit Citizens Street Railway Company, 184 U. S., 386.

We discover in the opinion in this case nothing which lends color to the contention. It is true that in the opinion the Court refer to the fact that the contention as to the existence of an adequate remedy at law had not been made in the Court below, and the opinion says in sustaining the jurisdiction that that fact with others is taken into consideration in the opinion.

We submit that the allegations of the bill clearly bring the cases at Bar within *Detroit vs. Detroit Citizens Street Railway Company (supra)* and *Smyth vs. Ames, 169 U. S. (supra)* and that various well recognized grounds of equitable jurisdiction appear. A multiplicity of suits would necessarily follow an attempt to put these ordinances into force, and equity will entertain jurisdiction to prevent such a condition. The interests of hundreds of thousands of people in the City of Cleveland are at once directly affected by these ordinances, and an attempt to put them into force and the uncertainty of their validity and the inability of the public patronizing the road for reimbursement if they submit to the ordinances, in and of itself makes it apparent that there is no other appropriate proceeding to determine the question involved.

Again, the only practical method by which the street railway companies could insist upon their alleged rights would be by refusal to carry passengers at the

rates fixed in said ordinances, and the enforcement of such refusal by ejection of passengers from such cars, a situation which at once threatens public peace and order, and which can be in no other way prevented but by resort to a Court of Equity.

Again complainants' franchise would be in jeopardy, the contention creating a cloud upon its title.

It should be remembered that the relief sought in these bills is an adjudication that the ordinances in question are void, and that equity may properly maintain a bill seeking to have a law of the state declared void as one which in practical operation impairs contracts or takes property without due process of law, has been repeatedly recognized by this Court.

In the concurring opinion of *Mr. Justice Miller in Chicago &c. Ry. vs. Minnesota*, the learned Justice, in referring to the remedies which corporations have when aggrieved by unreasonable tariff rates, says :

" *There is an ultimate remedy by the parties aggrieved in the courts for relief against such oppressive legislation and especially in the Courts of the United States, where the tariff of rates established either by the legislature or by the commission is such as to deprive a party of his property without due process of law. That the proper if not the only mode of judicial relief against the tariff of rates established by the legislature or by its commission is by a bill in Chancery asserting its unreasonable character, and its conflict with the Constitution of the United States, and asking a decree of the Court forbidding the corporation from exacting such fare as excessive, or establishing its right to collect the rates as being within the limits of just compensation for the services rendered.*"

Upon the well settled principles of equity jurisdiction and the repeated utterances of this Court, it is submitted that the bill upon its face is clearly cognizable in equity.

III.

It is also assigned as error that the Court below erred in adjudging these ordinances void, as impairing the contract obligations of the City of Cleveland; and this is the only assignment of error which in any sense goes to the merits of this controversy.

We do not deem it at all pertinent to here discuss the powers of the City of Cleveland irrespective of its legislative power as a party to the contract under discussion. We are not concerned with the question suggested by counsel as to what would be the power of the city under a general grant of power to regulate from time to time rates of fare to be charged by street railway companies. The only pertinent discussion in the case at Bar is whether the City of Cleveland at the time of the passage of the ordinances attacked had existing contracts with the complainants which were impaired by such ordinances, and that such was the situation we submit is clear beyond the shadow of a doubt upon inspection of the record.

A. *As to the ordinances referring to the Cleveland City Railway Company.* It is true that in 1879 the City Council and the Kinsman Street Railway Company made a contract for a line then known as the Kinsman Street line which contained the provision that the council might thereafter reduce or diminish the rate of fare, and this was a grant in pursuance of delegated legislative power vested in the council; but it also appears that the Kinsman Street Railway Company became absorbed by the Woodland Avenue Railway Company and that in 1883 an ordinance was passed which authorized the Woodland Avenue company to extend its tracks and to operate for twenty five years over its entire system, including that part of its system which first belonged to the Kinsman Street

Railway Company, and in express terms it is provided in this ordinance that one rate of five cents over its entire line shall be charged. This provision that the company shall charge for twenty five years a rate of fare of five cents over its entire line is absolutely inconsistent with there remaining in the council a power as respects such portion of its line as was formerly operated by the Kinsman Street Railway Company to reduce the rate.

Again, in 1885 the Woodland Avenue Railway Company and the West Side Street Railroad Company were consolidated. These were lines operating at the time upon different sides of the river, having independent grants, and each of the companies was authorized to charge a cash fare of five cents. The effect of the consolidation was to establish a new main line from the south easterly to the westerly portion of the city, and by the terms of such consolidation as authorized and fixed by the council of the City of Cleveland, it was provided that "*no greater charge than five cents shall be collected, and tickets at the rate of eleven for fifty cents or twenty two for one dollar shall at all times be kept for sale on cars by conductors.*" The main line which was so established and with respect to which the contract was made had reference to and included the operation of cars upon that portion of Woodland Avenue formerly Kinsman Street which is referred to in the original Kinsman Street grant of 1879, and it in terms is an agreement upon the part of the Woodland Avenue and West Side Street Railway Company that it will thereafter carry passengers over such entire route at a cash fare of five cents.

Again, in 1887 the Woodland Avenue and West Side Street Railway Company accepted an ordinance which in terms provided that over its entire line it should charge not to exceed five cents.

In August, 1887, still another ordinance was passed and accepted by the company, which includes its entire line, including that which was originally Kinsman Street, and it is granted the right to operate until 1908

at a cash fare not to exceed five cents, between any points upon its line.

In June, 1892, a further ordinance is passed and accepted, which makes the same requirement of the company, that it shall charge but one fare and sell tickets at eleven for fifty cents or twenty two for one dollar over its entire line.

Clearly it was competent for the City of Cleveland and the railway company to make these several agreements, and although it is true that a reservation was made as respects Kinsman Street in 1879, it is true that in all these many subsequent ordinances dealing with the same subject matter, the city entered into contracts with this company entirely inconsistent with the future exercise of any such reserved right as is contained in the ordinance of 1879. By these several ordinances the City of Cleveland agreed in express terms that this company might operate for the period named over this entire territory at a cash fare of five cents. But if there can be any doubt upon this subject, looking only at the ordinances applicable to the Woodland Avenue and West Side Street Railway Company's line, such doubt entirely disappears when reference is made to the fact that the Cleveland City Railway Company not only operates under all of the grants theretofore made to the Woodland Avenue Company, but also the grant of the Cleveland City Cable Railroad Company. This last named company was operated under grants of the city for periods of years which had not expired and was authorized through the entire period of said grant to charge a cash fare of five cents, there being in none of said grants any reservation of the right on the part of the city to increase or diminish said rate of fare. And at the time of such consolidation, the common council passed a resolution approving and consenting to the consolidation, requiring the company to operate the entire property and to charge a cash fare of five cents for each passenger.

To now require this company to charge a fare of

four cents upon Kinsman Street is in direct contravention of the contracts made incident to the consolidation ; the two contracts could not be carried out at the same time, and the contract of 1893 is the later contract.

It appears upon the record that since the consolidation forming the complainant company the Cleveland City Railway Company, it has continued the operation of its various lines as proposed in said communication. It also appears that none of the grants under which the constituent companies which form said complainant were authorized to operate its cars on its various lines of railway at a cash fare of five cents had expired. And, quoting from the decision of the Circuit Court, we ask :

> " This being the situation, can the city successfully contend that the reservation in the ordinance of 1879 relating to the Kinsman Street Railroad Company is now operative as respects the complainant the Cleveland City Railway Company ? Prior to 1885 the West Side Street Railway Company was operated on the west side of the Cuyahoga River. There was no interchange of traffic by transfer between it and the Woodland Avenue Railroad Company, and passengers were obliged to pay a cash fare upon each road. The West Side company was operating under a grant running for twenty five years from February 1883, entitling it to charge a cash fare of five cents. The consolidation of the Woodland Avenue and West Side companies was made upon the condition that a new through line of street railroads should be established so that for a single fare passengers should be carried from any point to any point on the lines or branches of the consolidated company. Upon the taking effect of this consolidation, the relations of the two companies to the city were so far changed that whereas the companies before had had independent lines of railroad and

charged separate fares, a new through line was established and a rate of fare fixed upon the entire line of five cents. The right to so charge five cents and to carry a ticket fare at the rate specified of course involved the right to charge such fare for the whole or any portion of the distance traveled on the line. It was competent for the company and the city to at that time agree with respect to the terms and conditions including the rate of fare upon which this through line should be operated. The parties did make such contract and one of the terms of the contract related to the rate of fare to be charged over the entire line. A part of the line with respect to which the rate of fare was so fixed in 1885 was the same line referred to in the Kinsman Street Railroad Company ordinance of 1879 ; that is to say, the city and the railway companies in 1885 contracted with respect to the subject matter referred to in the ordinance to the Kinsman Street Railroad Company in 1879. This ordinance of 1879 at the time related solely to the rate of fare upon Kinsman Street, operated as an independent line. The ordinance of 1885 is a contract with respect to the same subject matter, but establishes a rate of fare which should apply to the Kinsman Street line, not as an independent line but as part and parcel of a direct through line from the south easterly to the westerly part of the city. It is to be observed that no reservation is contained in this ordinance of any right to increase or diminish the rate of fare therein fixed, and the right to operate under this ordinance of 1885 was in full force in October, 1898. It must follow that no power existed in the council in 1898 to change the rate of fare which has been so established by agreement between the parties. Again, it is apparent that the existence of any such reservation is inconsistent with the right which is expressly granted by the ordinance of 1885. This right could not

co-exist with the right in the council to reduce the rate of fare during the period as respects a portion of the line. By the contention of the city, the right to reduce could now only be made applicable to the Kinsman Street line, and its extension. The city, however, contracted in 1885 that the Company might carry over the Kinsman Street line as part of the through line at a cash fare of five cents, from which contract it necessarily followed that the entire contract relations of the company and the city as respects the rate of fare to be charged on the Kinsman Street line were merged in the contract of 1885, and the subsequent ordinances by which the Kinsman Street line ceased to be independent and became part and parcel of a through line upon which a rate of fare for the full period of time was established. * * *

" Again, in determining the contract rights of the complainant company, regard must also be had to its rights under the grants to the Cleveland City Cable Railway Company, which the present company acquired by the consolidation of 1893. The cable company had the right to operate at a cash fare of five cents its independent lines of railway. By virtue of the consolidation, its various lines became part of a great through system operated by the consolidated company whereby the public acquired the right of continuous passage over the entire line for one fare of five cents or a ticket fare at the rate of eleven tickets for fifty cents or twenty two for one dollar. * * * A portion of the entire system which this company is now operating under these several grants from the city was formerly the line of the Kinsman Street Railway Company, and the reservations under which the city now claims a reduced fare upon the portion of the line which was formerly the Kinsman Street line, was made with

reference to and can only have reference to the operation of the Kinsman Street line as an independent line. Now the situation has so far changed that by operation of law and by express contract with the City of Cleveland, this original Kinsman Street line has become part and parcel of a through line and as respects the rates of fare which can be charged upon such other line, the city and the railway company have entered into various contracts expressly fixing the rates of fare to be charged over the other line or any part thereof. If these ordinances as respects rates of fare which we have been examining passed since 1879 are to be construed as statutes, it follows that having been passed subsequent to the ordinance of 1879 relating to the Kinsman Street Railroad and relating to the same subject matter, they are so far inconsistent with the ordinance of 1879 as to operate as a repeal thereof. If we treat these subsequent ordinances simply as contracts, it is apparent that having entered into a contract in 1879, the city has subsequently entered into various other contracts relating to the same subject matter and that these later contracts are so far inconsistant with the provisions of the original ordinance as that the rights of the parties must now be measured by their latest contract and not by the original agreement. Again, the inconvenience, if not the absolute impracticablity of enforcing the obligations of both the original ordinance of 1879 and the subsequent ordinance in and of itself must well nigh force the conclusion that the rights of the parties must be gathered from these later rather than from the original ordinance. The complainant company confessedly has the right by contract to carry over its entire line or any portion thereof at a cash fare of five cents, and this it may do until its present grants expire in the year 1908, and what the city

proposes by the ordinance of 1898 is to compel the company as respects a portion of its line to carry at a cash fare of four cents. Tne right to carry at five cents over the whole line or any portion thereof is inconsistent with the obligation to carry for less than five cents over some portion of the through line."

B. The situation as respects the complainant the *Cleveland Electric Railway Company* is quite similar to that which we have been discussing as to the other complainant. In 1879 an ordinance was passed granting to this company the right to build a road as far west as Wilson Avenue and to City limits, and in this ordinance the council reserved the right to thereafter increase or diminish the rate of fare. It appears by the allegations of the bill that prior to the 15th of September the East Cleveland Company was operating a line of railway from the intersection of Superior and Water Streets to the easterly limits of the City of Cleveland on Euclid Avenue; that it had various grants, some of the city and some from county commissioners and some from the village of East Cleveland; that it had but a single track; that it was charging two fares between Water Street and the easterly limits of the city. And it was in this situation when the council passed the ordinance of September 15, 1879, containing the reservation under which it now claims the right to pass the ordinance of 1898. After the passage of the ordinance of 1879 the company continued to charge two fares up to April 4, 1883, when the council passed an ordinance providing for an additional track on Euclid Avenue and containing the same reservation as respects fare. It appears in the record that this arrangement was unsatisfactory both to the company and to the public and that growing out of this dissatisfaction in *March, 1886* a new ordinance was passed fixing the rights of the company upon this Euclid Avenue line; and it was in this ordinance of 1886 provided that "*the rights as herein*

granted and conferred are upon the express condition, however, that such company shall charge and collect but one fare of not more than five cents for each passenger one way in either direction between the easterly limit of said city on Euclid Avenue and the westerly terminus of said company's tracks at the intersection of Superior and Water Streets, and upon the further condition that the said company shall run through cars over said line between said points last named in each direction as the public convenience requires, and the opinion of the common council by resolution expressed may require." And section 5 of the same ordinance provides "that the rights herein granted to lay and operate a double track street railroad on *Euclid Avenue between Fairmount Street and the easterly limits of the city shall cease and determine on the 20th day of September, 1904, as provided for said company's contracts on Euclid Avenue west of Fairmount Street.*"

There is contained in this ordinance no reservation of any right of the council to thereafter change the rate of fare, and the rate of fare is fixed upon the entire line of the road at five cents until the year 1904. The original ordinance of 1879 contained a reservation as to fare; the ordinance of 1883 contained a reservation as to fare; but in 1886 the council legislating upon the same subject matter and in respect to the same lines of road legislate and contract upon the subject of fare to be charged and it entirely omits any reservation as contained in the former ordinance and fixes the rate of fare in express terms for *the period covered by said ordinance of 1879 in which said reservation is found;* and this ordinance and contract of 1886 is still in force and effect. It in express terms prescribes the rate of fare which the company shall charge until 1904, and it obligates the company to operate through cars and maintain a double track and says that such right *shall terminate with the original ordinance of 1879* and *the ordinance of 1879 so referred to is the ordinance containing the reservation under which the city claims authority to act in 1898.* It is perfectly

apparent that it could not have been in the minds of the parties contracting that the reservation of the right to regulate fare in the ordinance of 1879 should be operative after the express contract in relation to fares for the entire period of the grant so made in the ordinance of 1886.

Again, it is submitted, quoting from the opinion of the Circuit Court:

> " Again, the council having in the ordinance of 1879 reserved the right to thereafter increase or diminish the rate of fare, did in 1886, in the making of this contract, fix the rate of fare at five cents, to extend from the passage of the ordinance up to the expiration of the grant made in 1879, so that it may be fairly said that the ordinance of 1886 was an exercise of the reserved right of regulation contained in the ordinance of 1879. But whether it be treated as an exercise of such right or as the entering into of a new contract, it is plain that after the passage and acceptance of the ordinance of 1886 there no longer remained in the city a right to increase or diminish the rate of fare to be charged on that line until the expiration of the grant of 1886, to wit, the year 1904. Again in 1888 an ordinance was passed granting the East Cleveland Railroad Company the right to construct and operate its road by electricity on Euclid and Cedar Avenues and in this ordinance it is recited whereas there is a desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit, and that an electric system be substituted for animal power for the movement of cars, therefore the East Cleveland Railroad Company is granted permission, etc. And in section 6 of the ordinance it is provided ' Nothing herein shall be so construed as to authorize any increase of present fare for transportation over any portion of said company's

lines.' * * * It is apparent that the 'present fare' referred to in the ordinance of 1888 must have had reference to the fare which the company was then charging and as fixed in the ordinance of 1886, namely, a cash fare of five cents."

Again, in 1886 the company acquired the right to operate a line for twenty five years from that date at the then present rate of fare referred to in the ordinance, namely, a cash fare of five cents. And in 1889 an ordinance was passed granting the East Cleveland Railroad Company a right to construct what is known as the Wade Park Avenue line, and by Section 4 of this ordinance it is provided "permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line or said extension, and but one fare and not exceeding five cents or one of said company's tickets shall entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water Streets to the easterly limits of the city, or from the easterly limits of the city to the intersection of Lake and Water Streets."

This ordinance of 1889 covers that portion of Euclid Avenue with respect to which it is claimed that the city may now regulate fares under the reservation in the ordinance of 1879. But it specifies, as did the ordinance of 1886, the rate of fare to be five cents upon the entire line.

Again, the complainant the Cleveland Electric Railway Company, is a consolidated company and each of its constituent companies were operating independent lines of railway in the city of Cleveland, each of them having a right to charge under grants which had not expired, a cash fare of five cents, and the city council consented to the terms of such consolidation providing in such consent that "only one fare" should be charged, and the one fare there mentioned must have reference to the present rate of fare then charged by the constituent companies, the fare of five cents.

Again, quoting from the opinion of the Court below, we submit: "It thus appears that by virtue of the ordinance of 1886 the East Cleveland Railroad Company was authorized to operate its line and cars to the end of its term at a cash fare of five cents. That each of the constituent companies which form the present complainant the Cleveland Electric Railway Company was also authorized for a period of time which has not yet expired to charge a cash fare of five cents. That these different lines have been merged by consolidation. That under the consolidation the system is being operated as an entirety. The portion of the Euclid Avenue line to which the reservation of the ordinance of 1879 had reference as an independent line has long since ceased to be such, and the relations of the consolidated company and the city under these various grants are so fixed as that to admit the reserved power of regulation in the ordinance of 1879 to be now operative would be to impair the obligations of the several subsequent contracts in which the rate of fare is definitely fixed without reservation."

Also as pointed out in the discussion of the question as to the other complainant, as a matter of practical railroad operation, it is difficult to see how the confessed rights of the parties could be worked out if effect is given to the alleged reserved power in the ordinance of 1879.

It is thus clear, we submit, as respects both of these complainants, that the contract relations existing between them and the City of Cleveland were such that the legislative enactment of 1898 seeking to reduce their rates of fare could not be operative because it was absolutely inconsistent with existing contracts between the parties.

IV.

It is contended by counsel that the reservation in the ordinance of 1879 of the right to increase or diminish the rate of fare was an obligation within the meaning of that section of the statutes of Ohio which deprives councils of the power to release a grantee from such obligation or liability. It is clear, we submit, that a reserved power of subsequent legislative regulation is not an "obligation" or a "liability." But even if we were wrong in this contention, it has been long settled by the law of Ohio that this provision of the statute does not prevent modification at any time of the contracts between street railway companies and the cities. As the city has power in the first instance to make the contract, by the same delegation of power it may modify the contract, except so far as modification is prohibited by statute.

And in the case of *Clement vs. City of Cincinnati, 16 Weekly Law Bulletin, 335*, in which case application was made to the Supreme Court for leave to file a petition in error, which was refused, thereby operating as an affirmance of the judgment *(see 19 Weekly Law Bulletin, 74)*, the Court held : " *The modification of a contract between the city and the owner of a street railroad route made in good faith for the better accomodation of the public is not void by virtue of Section 2502 of the Revised Statutes, and the release of the grantee of such route from an obligation, although in consideration of more rapid transit involving greater expense and higher rate of fare, is permitted. See also City of Cincinnati vs. Street Ry. Co. 31 Weekly Law Bulletin, 308 ; and Woodson vs. Murdock, 22 Wallace, 351.*

In the summary statement of appellant's contention found on *pages 39 and 40* of their brief are several propositions upon which we beg to briefly comment. It is said :

a. " That in none of the ordinances subsequent to the ordinances of 1879 was there anything which ex-

pressly surrendered or waived the rights of the city to regulate the rate of fare, nor was there any ordinance which is inconsistent with the provisions of these original renewal ordinances."

We have already pointed out as we think that whether the subsequent ordinances be treated as an exercise of the reserved power of regulation or whether they be treated as new and independent contracts, they were ordinances which related to the same subject matter and in express terms provided for a rate of fare fixed for the entire term, and were absolutely inconsistent with any future regulation under said reservation.

b. Again it is said " that any attempt to treat the consents to extensions, consolidations or changes of motive power as renewals of the rights renewed by the ordinances of 1879 must be nugatory in view of the positive provisions of statute above cited, which confer upon municipal councils the power to make such renewals only at the expiration of existing grants."

It is not true that there is any limitation upon the power of councils to make extensions before the expiration of existing grants. On the contrary, it has been expressly determined by the Supreme Court of Ohio that " *renewals may be made before the expiration of the original grant.*" See *State ex rel. vs. East Cleveland Railroad Company, 6 CC, 318. Affirmed by Supreme Court 27 Law Bulletin, 64 ;* also *Cincinnati vs. Cincinnati St. Ry. Co., 31 Law Bulletin, 308.*

Again, it is suggested by counsel that as the statutes of Ohio provide that upon consolidation or extension there shall be no increase of fare, that the fixing of fare for the entire term, if it be treated as rendering inoperative the reserved rights in the ordinance of 1879, would be a violation of this statute.

It is a complete anwser to this suggestion to point out that in no one of the ordinances upon which complaints rely was there an increase of fare. They simply amounted to a confirmation of the rights of the

company for the periods named to continue to charge the existing rate of fare, which was five cents.

Again, the reserved right is to increase as well as to diminish, and if the effect of subsequent ordinances was to increase the fare, such action was within the reservation.

V.

The several resolutions to which references have been made passed by the city council approving the terms of consolidation and fixing the rates of fare which should be observed by the consolidated companies constituted action of the city council passed in pursuance of *3443 of the Revised Statutes*, and this statute provides in express terms "*council or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such railways may be constructed, operated, extended and consolidated.*" And the only limitation upon the power of the council *in* thus consenting to terms of consolidation, construction and operation is that in case of an extension or of a consolidation no increased rate of fare shall be allowed. Under the statutes as set forth in the appellant's brief, it appears that the whole subject matter of construction, operation, extension, renewal and consolidation of street railroad companies is referred by legislation to the council with absolute power to contract with reference to all these matters, subject only to the limitation that where companies consolidate or where the ordinance relates to an extension, there shall be no increase of fare. In none of the ordinances upon which the complainants relied below as determining their rights was there any attempt made to increase the present rates of fare, but they were each and all contracts duly and legally made by which the city

council of Cleveland fixed for terms of years which have not yet expired specific rates of fares which might be charged by the companies over their lines of road, which lines included that small section of the present property which was affected by the ordinances of 1879. An exercise of power under the reservation in 1879 cannot be had consistently with the admitted present contract relations between the companies and the city.

VI.

That a contract to charge "not more than five cents" confers the right for the term to charge five cents fare.

Detroit vs. Detroit Ry. Co., *supra.*

It is respectfully submitted that the judgment below should be affirmed.

WM. B. SANDERS
Of Counsel.

Supreme Court of the United States.

No 255.—October Term, 1903.

The City of Cleveland, Appellant, *vs.* The Cleveland City Railway Company. } Appeal from the Circuit Court of the United States for the Northern District of Ohio.

[May 31, 1904.]

This suit was brought in the Circuit Court to restrain the enforcement of an ordinance of the city of Cleveland, passed October, 1898, fixing the rates of fare to be charged by the appellee on a portion of its line of street railroad.

The bill based the right to relief upon two grounds, that is, a violation of the contract clause of the Constitution of the United States and of the due process clause of the Fourteenth Amendment, the latter because the rates fixed by the ordinance, if enforced, would be confiscatory.

After hearing, a temporary injunction was allowed. The court in stating its reasons, confined them exclusively to the alleged impairment of the obligations of contracts, and decided that it was unnecessary to consider the rights alleged under the Fourteenth Amendment. (94 Fed. Rep. 385.)

Both parties thereupon amended their pleadings, so that upon the face of the record the facts concerning the alleged impairment of contract rights appeared as found by the court in awarding the temporary injunction. The bill as amended, however, also reiterated the facts originally claimed to constitute a violation of the due process clause of the Fourteenth Amendment. The pleadings being thus amended, the complainant moved as follows:

"The above-named complainant, The Cleveland City Railway Company, now comes and moves the court to enter final decree in its favor as prayed for in the amended bill of complaint herein, adjudging the ordinance in said amended bill of complaint described, entitled 'An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25th, 1879, entitled "An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,"' passed October 17, 1898, to be null and void and of no effect, in that, as appears by the amended bill of complaint and the admissions of the amended answer herein, said ordinance is in violation of the contract obligations existing between the complainant and the defend-

ant herein, and impairs the contract rights of the complainant, in violation of the Constitution of the United States.

"Complainant further shows that, upon the amended bill, amended answer and replication it is entitled to the decree without a determination of any of the matters in respect to which issues are raised by the amended answer of the defendant herein."

The court granted this motion for the reasons which it had expressed in the opinion by it delivered on the allowance of the temporary injunction. A final decree was thereupon entered, perpetually enjoining the enforcement of the assailed ordinance. Because of the constitutional question the case was then appealed directly to this court.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

As will appear by the statement just made, whilst two grounds under the Constitution of the United States were asserted in the bill as originally filed and as amended, the cause was in effect submitted to the court for decree upon one of the constitutional grounds alone—that is, the alleged impairment of the obligations of certain asserted contracts. Conceding that the alleged rights based on the due process clause were not waived, but were merely reserved for future action, it is manifest that the motion of the complainant for decree on the face of the pleadings confined the controversy exclusively to the alleged contract rights, and we shall therefore treat the case as if it solely involved such rights. The facts necessary to a determination of the question of contracts and their impairment appear on the face of the pleadings, and may be summarized as follows:

On August 25, 1879, an ordinance was passed by the city council of Cleveland, granting to the Kinsman Street Railroad Company, an Ohio corporation, a renewal franchise for twenty-five years from September 20, 1879, to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland. The ordinance was duly accepted. A section of the ordinance was as follows:

"SEC. 7. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient."

In 1880 another Ohio corporation, known as the Woodland Avenue Railway Company, then operating a line of street railroad under several grants from the city of Cleveland, became, by purchase, the owner of the Kinsman street railroad, and thereafter operated such road.

The Woodland Avenue Railway Company in May, 1883, was granted by ordinance the right to construct an extension of its line, and provision

was made in the ordinance for a charge of one fare over the entire line, including the extension. The extension was built and operated as required by the ordinance.

At the time the ordinance extending the Woodland Avenue road just referred to was passed there was in existence another Ohio corporation, styled the West Side Street Railroad Company, operating a line of railroad in Cleveland under a franchise granted by the city council of Cleveland for a term of twenty-five years from February 10, 1883. This road was independent of the Woodland Avenue Railway Company, and operated its cars chiefly upon the west side of the Cuyahoga River, the Woodland Avenue line being upon the east side. There was no exchange of traffic between the roads by way of transfers, and each was charging a fare of five cents over its line. In 1885, with this condition of affairs existing, the roads named were consolidated as the Woodland Avenue and West Side Street Railroad Company, and the consolidated company became vested with all the property, rights and privileges of the two constituent companies. The ordinance, the acceptance of which accomplished such consolidation, was as follows:

"An ordinance to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company and said companies may be consolidated.

"SEC. 1. Be it ordained by the city council of the city of Cleveland, That the consent of the city is hereby given to the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company on the following conditions:

"The said consolidated company to carry passengers through without change of cars by running all cars through from the workhouse on the Woodland Avenue Railway to the point on the West Side Street Railroad where Condon avenue crosses Lorain street, and, when practicable in the judgment of the council, to do likewise on the branches of the consolidated line, and that for a single fare from any point to any point on the line or branches of the consolidated road no greater charge than five cents shall be collected, and that tickets at the rate of eleven for fifty cents or twenty-two for one dollar shall at all times be kept for sale on the cars by conductors.

"SEC. 2. Said consolidated company shall be subject to all the liabilities, conditions and penalties to which said several companies are liable; and said consolidated company and its tracks shall at all times be subject to the control, regulation and supervision of the city council, to the same extent that the same several companies and their tracks are now liable.

"SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication, the filing with the city of a written agreement accepting and agreeing to the terms thereof, signed by the proper persons for the companies consolidated, and the payment to the city of the expenses of printing and publishing this ordinance.

"Passed February 16, 1885."

By ordinance dated April 8, 1887, duly accepted, the Woodland Avenue and West Side Street Railroad Company was authorized to lay an additional track and extend its line of railroad. The first section of the ordinance reads as follows:

"SEC. 1. Be it ordained by the city council of the city of Cleveland, That the Woodland Avenue and West Side Street Railroad Company, its successors and assigns, be and the same is hereby authorized and empowered to lay an additional track in Franklin avenue, between Pearl street and the westerly line of Franklin circle, and to extend its line of railroad to Franklin avenue from the westerly line of Franklin circle to Kentucky street, as a single track railroad, and connect with the tracks of said company in Kentucky street, as shown on a plan accompanying the petition of said railroad company and referred to the board of improvements March 14, 1887, and to equip and operate said extension as herein provided, but on the express condition that no increase of fare shall be charged by said railroad company on any part of its main line or on said extension, and so that but one fare, not to exceed five cents, shall be charged between any points on said company's main line or extension, including the extension herein granted, and said company shall sell tickets on its cars as follows: Eleven (11) tickets for fifty cents, and twenty-two (22) for one dollar. And the right herein granted shall terminate with the present grant of the main line, to wit, on the 10th day of February, 1908."

By ordinance dated August 12, 1887, duly accepted, the Woodland Avenue and West Side Street Railroad Company was authorized to build, equip and operate an extension of its road therein provided for, the first section containing a provision as to rates of fare and the time of expiration of the right granted, similar to that contained in the first section of the ordinance of April 8, 1887, above quoted. The said railroad company also duly accepted an ordinance, passed on or about June 20, 1892, by the city council of Cleveland, relating to the laying of an additional track on Kinsman street, and the first section of the ordinance contained a similar provision to that embodied in the two ordinances last referred to, respecting rates of fare and the time when the right granted should expire.

Prior to May, 1893, besides the Woodland Avenue and West Side Street Railroad Company, there existed in Cleveland a railroad corporation known as the Cleveland City Cable Railway Company. This corporation, as the successor in right of previous corporations, operated two street railroad lines, one by horse power and the other by cable, and each of said lines charged a cash fare of five cents.

In June, 1893, with the approval of the common council of the city of Cleveland, the Cleveland City Cable Railway Company and the Woodland Avenue and West Side Street Railroad Company became a consolidated corporation, under the name of the Cleveland City Railway Company, the

complainant in this cause. By the consolidation it was provided that the lines should be operated as one system, that proper transfers should be issued, and that but one fare should be charged for a continuous passage upon any portion of the consolidated lines.

It is admitted that, as the result of the various ordinances and consolidations above referred to, the corporations ceased to charge a cash fare of five cents for riding over the roads embraced in the Kinsman street railroad ordinance of 1879, and on the other roads which had been at that time in existence; and, on the contrary, in consequence of the ordinances and authorized consolidations, there was charged only five cents for a ride over the whole system or systems, and tickets were sold and transfers issued as provided in the various ordinances. It is not asserted that the corporations at any time failed to perform the additional obligations imposed upon them by the various ordinances passed subsequently to 1879.

On October 17, 1898, an ordinance was adopted by the council of the city of Cleveland, reading as follows:

"An ordinance to provide for a diminution of the rate of fare under section 7 of an ordinance passed August 25, 1879, entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland.'

"Whereas, the city council did, on the 25th day of August, 1879, pass an ordinance entitled 'An ordinance granting a renewal of franchise to the Kinsman Street Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the city of Cleveland,' by which ordinance said Kinsman Street Railroad Company, its successors, and assigns, were authorized to reconstruct, maintain and operate its double-track street railroad, commencing on Superior street at the intersection of Water street, thence to and around the southwest corner of Monumental square to Ontario street; thence through Ontario street to and through a portion of Broadway street to Woodland avenue (formerly Kinsman street), thence through said avenue to Madison avenue, subject to certain conditions and limitations; and

"Whereas, it was ordained, as part of these conditions and limitations (section 7), that 'said company shall not charge more than five cents fare each way for one passenger over the whole or any part of its line, but said company may charge a reasonable compensation for carrying packages; the council, however, reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient;' and

"Whereas, the council does now deem justifiable and expedient a diminution of the rate of fare, therefore—

"SEC. 1. Be it ordained by the city council of the city of Cleveland, That the rate of fare for a single continuous passage over the lines, and all extensions thereof, operated under the aforesaid grant to the said Kinsman Street Railroad Company, be, and is hereby, fixed at four (4) cents cash fare over the whole or any part thereof.

"SEC. 2. For the better accommodation of the public any person, company or corporation operating said line of railway under said grant shall at all times keep on sale on the cars, when in operation, tickets good for a single continuous passage over said lines and all extensions thereof at the rate of seven tickets for twenty-five cents.

"SEC. 3. This ordinance shall take effect and be in force from and after its passage and legal publication."

And this ordinance is the one complained of, the enforcement of which the final decree below enjoined.

Bearing the facts above stated in mind, we come to consider the merits of the case. Before proceeding, however, to do so we must dispose of contentions made below and reiterated in the argument in this court, concerning the jurisdiction of the Circuit Court.

The alleged want of jurisdiction in the Circuit Court is based upon two propositions, first, that the suit is not one arising under the Constitution of the United States; and, second, that the subject matter of the suit is not within the cognizance of a court of equity.

The argument in support of the first contention presents a twofold aspect: (*a*) That as the reduction of fares provided in the assailed ordinance only related to carriage over that portion of the consolidated road which was formerly owned by the Kinsman Street Railroad Company, no impairment of the obligation of a contract could or did arise, because in the ordinance of 1879 there was an express reservation of the right of the city to alter the rates of fare as to the road affected by that ordinance.

The proposition is without merit. It assumes a false issue and upon that erroneous premise, the challenge to the jurisdiction is based. The complainant did not rely upon a contract arising from the ordinance of 1879, but upon the contracts alleged to have resulted from the subsequent ordinances, which it was in substance asserted had deprived the city of the power to exercise the right reserved in the ordinance of 1879, and it was these subsequent contracts which it was contended were impaired by the assailed ordinance.

(*b*) That there was no jurisdiction, even although the complainant relied upon contracts arising from the ordinances adopted subsequent to that of 1879. To constitute the impairment of a contract within the sense of the Constitution, it is correctly argued, requires that some subsequent action taken by the State or under its authority should have been given effect as against the contract. The argument is that as there had not been delegated by the State of Ohio to the city of Cleveland independent authority to reduce rates of fares on street railroads, and as the power asserted by the assailed ordinance was based solely on the right reserved in the ordinance of 1879, it follows that the assailed ordinance, even if

unwarranted was not an impairment of a contract right in the constitutional sense.

This proposition is in conflict with the one just considered, and in effect assumes, that the defence of the city was without merit, and hence there was no jurisdiction. But irrespective of the assumption upon which it rests, the proposition is untenable, and the argument by which it is sought to be sustained is somewhat wanting in consistency. The passage by the city of the assailed ordinance necessarily amounted to an assertion on its part that the legislative authority vested in it to pass the ordinance of 1879 gave the continued power to pass subsequent ordinances executing the rights initiated by the ordinance of 1879, despite the ordinances which had supervened. This in its very essence was the assertion of a delegated power to legislate against the contracts embodied in the ordinances relied upon. We have said that the argument is somewhat wanting in consistency, because the contention of the city on the record is that the ordinances asserted as contracts, passed subsequently to 1879, did not deprive the city of the continued power to exert authority as to rates, because the statutes of Ohio prevented the city from abrogating, by the subsequent contracts, the rights reserved in the ordinance of 1879. And this is but to assert that, as a consequence of the continued effect of the legislation of the State of Ohio, the city had the power to pass the assailed ordinance, even although it had apparently disabled itself from so doing by the passage of many ordinances adopted after 1879 and up to the time when the assailed ordinance was passed. These considerations distinguish this case from *Hamilton Gas Light Co.* v. *Hamilton City*, (146 U. S. 258,) and *St. Paul Gas Light Co.* v. *St. Paul*, (181 U. S. 142,) relied upon by the appellant.

Respecting the contention that the case presented by the record was not within the jurisdiction of a court of equity, it suffices to say that, in view of the controversies, confusion, risks and multiplicity of suits which would necessarily have been occasioned by the resistance of the complainant to the enforcement of the ordinance, and in view of the public interests and the vast number of people to be affected, the case was one within the jurisdiction of a court of equity. This conclusion is, we think, besides inevitable, when it is borne in mind that the ordinance in question did not purport to reduce rates of fare upon the consolidated line, but was made operative alone upon a section of that line, and, therefore, necessarily, would have engendered the enforcement of two rates of fare over the same line, leading to consequences dangerous to the public interest, peace and tranquility, the extent of which it would be difficult in advance to perceive. And this, we think, brings the case directly within the principle by which jurisdiction in equity was maintained in *Detroit* v. *Detroit Citizens' Railway Co.*, (184 U. S. 368.)

We come then to the merits. For convenience of reference we copy in the margin * pertinent sections of the Revised Statutes of Ohio, embracing all which, either directly or indirectly, during the period covered by the ordinances set out im the bill, vested the municipal council of Cleveland with power to regulate or to contract in respect to the rates of fare to be charged by street railways.

The statutes show that there was lodged by the legislature of Ohio in the municipal council of Cleveland comprehensive power to contract with street railway companies in respect to the terms and conditions upon which such roads might be constructed, operated, extended and consolidated, the only limitation upon the power being that in case of an extension or consolidation no increase in the rate of fare should be allowed.

That in passing ordinances, based upon the grant of power referred to, the municipal council of Cleveland was exercising a portion of the authority of the State, as an agency of the State, cannot in reason be disputed. If, therefore, the ordinances passed after August, 1879, and referred to pre-

* *Copied from Bates' Annotated Statutes of Ohio—Revision of* 1897.

SEC. 2501. (Terms and conditions of construction and operation to be fixed by council; renewal of grant.)—No corporation, individual or individuals shall perform any work in the construction of a street railroad until application for leave is made to the council in writing, and the council by ordinance shall have granted permission and prescribed the terms and conditions upon and the manner in which the road shall be constructed and operated and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest.

SEC. 2502. (Proceedings to establish a street railroad route; grant not valid for more than twenty-five years.)—Nothing mentioned in the next preceding section shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council, except upon recommendation of the board of public works in cities having such a board, and of the board of improvements in other municipalities having such a board; and no ordinance for the purpose specified in said preceding section shall be passed until public notice of the application therefor has been given by the clerk of the corporation in one or more of the daily papers, if there be such, and if not then in one or more weekly papers published in the corporation, for the period of at least three consecutive weeks; and no such grant as mentioned in said preceding section shall be made, except to the corporation, individual or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rate of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant or renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period

viously, which ordinances were accepted by the predecessors of the complainant, with whom it is in privity, constituted contracts in respect to the rates of fare to be thereafter charged upon the consolidated and extended lines (affected by the ordinances) as an entirety, it necessarily follows that the ordinance of October, 1898, impaired these contracts.

The question for decision then is, Did the consolidated ordinance of February, 1885, and the ordinances thereafter passed and accepted, already referred to, constitute binding contracts in respect to the rates of fare to be thereafter exacted upon the consolidated and extended lines of the complainant?

That in the courts of Ohio the acceptance of an ordinance of the character of those just referred to is deemed to create a binding contract is settled. (*Railway Co.* v. *Village of Carthage*, 36 Ohio St. 631, 634; *City of Columbus* v. *Street Railway Co.*, 45 Ib. 98.) But let us consider the question without treating the Ohio decisions as conclusive. It is undoubtedly true that immediately before and for a long time prior to the passage of the ordinances concerning the various consolidations and extensions referred

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than twenty-five years from the date of such grant or renewel, except in cities of the second grade of the second class, in which no grant or renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than fifty years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant.

SEC. 2504. (Pavement of streets where railroads are constructed; proviso.)—The council may require any part or all of the track, between the rails of any street railroad, constructed within the corporate limits, to be paved with stone, gravel, boulders or the Nicholson or other wooden or asphaltic pavement, as may be deemed proper, but without the corporate limits, paving between the rails with stone, boulders or Nicholson, or other wooden or asphaltic pavement, shall not be required; provided, that in cities of the second grade of the first class the council may require of any street railroad company to pave and keep in constant repair, sixteen feet for a double track or seven feet for a single track, all of which pavement shall be of the same material as the balance of the street is paved with.

SEC. 2505. (Council of city or village may grant extension of street railroad.)—The council of any city or village may grant permission, by ordinance, to any corporation, individual or company owning, or having the right to construct, any street railroad, to extend their track, subject to the provisions of sections three thousand four hundred and thirty-seven, three thousand four hundred and thirty-eight, three thousand four hundred and thirty-nine, three thousand four hundred and forty, three thousand four hundred and forty-one, three thousand four hundred and forty-two, and three thousand four hundred and forty-three, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by con-

to the respective roads affected thereby were charging a cash fare of five cents over their respective lines, and that the effect of the consolidations and extensions was to secure to the public the benefit of a cash fare of five cents over the whole length of the consolidated and extended lines.

Now, undoubtedly, the common council of Cleveland, in authorizing the extension and consolidation of the lines of street railroads in question, did so because in its opinion such extensions and consolidations would operate beneficially to the public. See near the close of sec. 2505, Rev. Stat. Ohio, previously inserted in the margin. That in exercising these powers it was the intention of the city to avail of the authority conferred by section 3443 of the Revised Statutes of Ohio, " to fix the terms and conditions upon which such railways may be constructed, operated, extended and consolidated," and that it was also the intention of the city to execute binding agreements in respect to the rates of fare to be thereafter charged by the

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solidation under existing laws, shall not be increased by reason of such extension or consolidation.

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SEC. 2505*b*. (Consolidation.)—Wherever the lines or authorized lines of road of any street railroad corporations or companies meet or intersect, or whenever any such line of any street railroad corporation or company, and that of any inclined plane railway or railroad company or corporation, or any railroad operated by electricity or other means of rapid transit may be conveniently connected, to be operated to mutual advantage, such corporations or companies, or any two or more of them, are hereby authorized to consolidate themselves into a single corporation; or whenever a line of road of any street railroad company or corporation organized in this State is made, or is in process of construction to the boundary line of the State, or to any point either within or without the State, such corporation or company may consolidate its capital stock with the capital stock of any corporation or company, or corporations or companies, in an adjoining State, the line or lines of whose road or roads have been made or are in process of construction to the same point or points, in the same manner and with the same effect as provided for the consolidation of railroad companies in sections 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391 and 3392 of the Revised Statutes, and any and all acts amendatory and supplementary to said sections and each of them; and the said sections, including these so amended and supplemented, are adopted and made a part of this section.

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SEC. 3443. (Council, &c., may fix terms and conditions.)—Council, or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such [street] railways may be constructed, operated, extended, and consolidated.

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(3443-12.) SEC. 5. (Consolidation.)—Such street railroad companies may consolidate on the terms and conditions applicable to the consolidation of railroad companies; provided, however, no increase of fare shall be allowed on any street railroad route by reason of such consolidation.

railroad companies, will, we think, become clearly apparent by considering the language employed in the ordinances. Thus in the ordinance of February 16, 1885, fixing the terms and conditions upon which the West Side Street Railroad Company and the Woodland Avenue Railway Company, and the tracks of those companies, might be consolidated, it was specifically provided "that for a single fare from any point to any point on the line or branches of the consolidated road no greater charge than five cents shall be collected, and that tickets at the rate of eleven for fifty cents or twenty-two for one dollar shall at all times be kept for sale on the cars by conductors." The acceptance of this ordinance by the railroad companies affected thereby was required to be in writing, and filed with the city Like provisions were contained in the ordinance of April 8, 1887, authorizing the laying of an additional track and the extension of the lines of the Woodland Avenue and West Side Street Railroad Company, and there was also a declaration, following the authorization of the extension and the rates to be charged on the whole line, that "The right herein granted shall terminate with the present grant of the main line, to wit, on the 10th day of February, 1908." The ordinance of August 12, 1887, authorizing a further extension, and the ordinance of June 20, 1892, authorizing the double tracking of a portion of the line, contained similar language.

In reason, the conclusion that contracts were engendered, would seem to result from the fact that the provisions as to rates of fare were fixed in ordinances for a stated time and no reservation was made of a right to alter, that by those ordinances existing rights of the corporations were surrendered, benefits were conferred upon the public, and obligations were imposed upon the corporations to continue those benefits during the stipulated time. When, in addition, we consider the specific reference to limitations of time which the ordinances contained, and the fact that a written acceptance by the corporations of the ordinances was required, we can see no escape from the conclusion, that the ordinances were intended to be agreements binding upon both parties definitely fixing the rates of fare which might be thereafter charged. Taking all the circumstances above referred to into account, the case before us clearly falls within the rule as to the binding character of agreements respecting rates applied in *Detroit* v. *Detroit Citizens Street R. Co.*, (184 U. S. 368,) and approvingly referred to in *Knoxville Water Co.* v. *Knoxville*, (189 U. S. 437.) This being the case, the question is whether the ordinance of 1898 impaired the obligations of those contracts.

By the assailed ordinance the city of Cleveland, assuming to assert continuing delegated power and upon the theory that the subsequent contracts were void as to that power, disregarded the provisions for consolidations, extensions, &c., and whilst retaining all the benefits procured by the ordinances for the public, reduced the cash and ticket fares over the portions

of the line embraced in the ordinance of 1879, of the Kinsman street railroad, which had long since lost its identity and become merged with other roads. That this was an impairment of the contracts embodied in the prior ordinances, we think is free from doubt.

Finally, it is contended that the ordinances embodying the contracts were void in so far as they attempted to deprive the city of the continuing legislative power to act on the reservation contained in the ordinance of 1879. This is based on the assumption that the right reserved in that ordinance to increase or reduce rates of fare was an obligation and liability imposed upon the railroad corporation within the meaning of section 2502 of the Revised Statutes of Ohio, declaring that a municipal corporation should not, during the term of a grant or renewal thereof, release the grantee from any obligation or liability imposed by grant. But it has been held in Ohio, on reasoning commending itself, that a modification of a contract between a municipality and the owner of a street railroad, made in good faith for the better accommodation of the public, is not void by virtue of said section 2502 of the Revised Statutes of Ohio. (*Clement* v. *City of Cincinnati*, 16 Weekly Law Bulletin, p. 335, decided June 14, 1886, by the general term of the Superior Court of Cincinnati; leave to file a petition in error refused by the Supreme Court of Ohio, on January 17, 1888. 19 Ib. 74.)

It is further contended "that any attempt to treat the consent to extensions, consolidations or change of motive power as renewals of the rights renewed by the ordinance of 1879, must be nugatory in view of the positive provisions of the statute above cited, which confer upon municipal corporations power to make such renewals only at the expiration of existing grants." This contention has also been passed upon by the courts of Ohio, construing the provisions of the Revised Statutes of that State, relied upon, and it has been held that renewals may be made before the expiration of the original grant. (*State* v. *East Cleveland Railroad Company*, 6 Circuit Court Rep. 318, affirmed by the Supreme Court of Ohio without opinion, 27 Weekly Law Bulletin, 64.)

Concluding, as we do, that the ordinance of 1898, impaired the obligations of contracts entered into by the city of Cleveland fixing the rate of fare to be charged on the lines of railroad operated by the complainant, the decree of the Circuit Court adjudging the nullity of this ordinance was right, and it is therefore

Affirmed.

Mr. Justice HARLAN took no part in the decision of this cause.

Supreme Court of the United States.

No. 256.—October Term, 1903.

The City of Cleveland, Appellant, vs. The Cleveland Electric Railway Company.	Appeal from the Circuit Court of the United States, for the Northern District of Ohio.

[May 31, 1904.]

Mr. Justice White delivered the opinion of the Court.

This case is analogous in the facts shown by the record to the one just decided, (*The City of Cleveland* v. *The Cleveland City Railway Company*,) and presents identical questions of law.

We shall briefly advert to some only of the material facts.

An ordinance was passed by the city council of Cleveland in 1879, granting a renewal of franchise to the East Cleveland Railroad Company, and in section 6 of the ordinance it was provided as follows:

"Said company shall not charge more than five cents fare each way for one passenger over the whole or any part of the line herein renewed, but said company may charge a reasonable compensation for carrying packages. The council, however, reserves the right to hereafter increase or diminish the rate of fare, as it may deem justifiable and expedient."

By ordinances duly accepted, passed in 1886, 1888 and 1889, extensions were authorized, the right was given to double track portions of the line, the franchise was extended, and additional obligations were assumed by the railroad company in respect to paving, &c. It was expressly stipulated in the ordinances of 1886 and 1887 that the company should charge and collect for passage over its lines in either direction but one fare, of not more than five cents; there was no reservation of the future right to alter rates of fare; and it was agreed that the rights conferred should continue during the life of the franchise.

In 1893 the East Cleveland Railroad Company was consolidated with three other corporations, independent lines of railway, in the city of Cleveland, each of them operating under contracts or grants from the city, and charging, as authorized in the ordinance permitting their operation, a cash fare of five cents. As to no one of these companies was there any right remaining in the city council to increase or diminish the rate of fare during the period of the several grants. The fare then being charged by all the constituent companies was five cents. Since the consolidation the

system has been operated in its entirety, and but a single fare of five cents has been charged.

On October 17, 1898, the city council of Cleveland passed an ordinance reducing the cash fare to be charged by the complainant on the portion of its line affected by the ordinance of 1879 to four cents, and required seven tickets to be sold for twenty-five cents. The validity of this ordinance was assailed by the bill filed in this cause, and similar contentions were urged against its constitutionality as are contained in the bill filed in the suit brought by the Cleveland Railway Company. Like jurisdictional objections were also interposed in this case by the city of Cleveland as were raised in the other case.

The Circuit Court granted a motion for judgment upon the pleadings and decreed that the ordinance of 1898 was void because it impaired the obligations of prior contracts. (94 Fed. Rep. 385.) The principles applied in the case of the Cleveland City Railway Company, just decided, govern this case, and, as a result, the decree of the Circuit Court must be and it is

Affirmed.

Mr. Justice HARLAN took no part in the decision of this cause.

True copy.

Test:

Clerk Supreme Court, U. S.